FEDERAL COAL LEASING EFFECT IN MONTANA

HEARING

BEFORE THE

SUBCOMMITTEE ON ENERGY AND MINERAL RESOURCES

OF THE

COMMITTEE ON ENERGY AND NATURAL RESOURCES UNITED STATES SENATE

NINETY-SEVENTH CONGRESS

SECOND SESSION

TO CONSIDER THE FEDERAL COAL LEASING EFFECT IN MONTANA

BILLINGS, MONT., FEBRUARY 22, 1982

Publication No. 97–100

Printed for the use of the Committee on Energy and Natural Resources

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U.S. GOVERNMENT PRINTING OFFICE

11-555 O WASHINGTON: 1982

S 311-62

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FEDERAL COAL LEASING EFFECT IN MONTANA

MONDAY, FEBRUARY 22, 1982

U.S. SENATE,
SUBCOMMITTEE ON ENERGY AND MINERAL RESOURCES,
COMMITTEE ON ENERGY AND NATURAL RESOURCES,
Billings, Mont.

The subcommittee met, pursuant to notice, at 9:15 a.m. in room 510 of the Yellowstone County Courthouse, Hon. John Melcher, presiding.

Present: Senator Melcher.

Also present: Roger Sindelar, counsel; and Linda Mason, professional staff member for the minority.

OPENING STATEMENT OF HON. JOHN MELCHER, A U.S. SENATOR FROM THE STATE OF MONTANA

Senator MELCHER. The subcommittee will come to order.

This is a public hearing to address a proposal for coal leases in the Powedr River basin. The timing, the extent and the location of Federal coal leases are of greatest importance, in my view, to the ongoing mining operations in the area; that's our first concern.

The Bureau of Land Management, 10 days ago, recommended the leasing of 17 tracts of Federal coal reserves in the Powder River basin. They contain an estimated 2.24 billion tons of coal. Nine of these tracts are in Montana, and eight are in Wyoming. This proposed coal lease sale involves significant amounts of coal in Montana and in Wyoming, but the Montana portion alone amounts to about 850 million tons, which is 25 times as much as is currently produced each year in Montana.

The Office of Technology Assessment, which is an advisory arm of Congress, late last year issued a rather critical report of the Federal coal leasing program and raised several questions about this proposed sale. The December report of the Office of Technology Assessment said, in part, that an assessment of development and production potential of Federal coal leases depends really on increased market demand, not simply the availability of leased coal reserves. This assessment of what the demand is should really determine the amount of coal that will, first of all, be leased and produced in the area.

Of the factors that will create that demand, first of all, would be the demand for electricity and, second, the nonutility markets for coal, such as industrial uses, as synthetic fuel production; and, last, the potential for coal exports.

By 1980, the Federal Government had leased 812,000 acres in the 14 Western States with recoverable coal reserves estimated to be 16½

billion tons. Montana, Colorado, New Mexico, North Dakota, Oklahoma, Utah, and Wyoming contain more than 99 percent of the leased Federal reserves. As of 1980, there are 189 leases with an estimated 7.4 billion tons of coal that were part of active mines; another 118 leases with 2.5 billion tons with proposed mine plans pending. These may begin producing in the mid-1980's. I repeat that the mines that are inoperation now need their leases in a timely manner. I do not believe however, that we need a great deal more speculative bidding where it is unlikely there will be actual mining for 20 years or longer.

In 1979 more than 50 percent of the Federal coal produced came from the Powder River basin; it also has 59 percent of the Federal coal now under lease. During that same year, 1979, these same Powder River basin mines had the capacity to produce an additional 75 million tons over what was actually mined. There is some likelihood that the coal demand from the Powder River basin is likely to increase significantly over the next decade. The OTA report adds, however, that the capacity for existing Federal leases and nonfederal coal properties in the basin could also increase substantially over the next decade. We also have Burlington Northern coal, a big owner of coal in this area. We have Indian coal on the Crow Reservation and the Northern Cheyenne Reservation, which, if it becomes active, would also seek and supply part of the demand of this area.

The Montana tracts which are recommended for leasing are the Ashland-Decker-Birney area, Colstrip A and B in Rosebud County, Colstrip C, also in Rosebud County, and Colstrip D, also in Rosebud County; Cook Mountain and Powder River in Rosebud County combined, North Decker in Big Horn, and the Northwest Otter Creek in the Powder River, Spring Creek in Big Horn, Southwest Otter Creek in Powder River, and West Decker in Big Horn are also recommended as potential sales this year.

In addition to that, the Bureau of Land Management has also recommended a 1,033-acre Coal Creek tract in Powder River in Rosebud County and a 3,779-acre Timber Creek tract in Campbell County, Wyo., both of these tracts are to be offered for small business set-aside leasing.

We have on our witness list the BLM, speaking for the coal team. We have a number of representatives of the mining companies that are now operating in the area, and we also have witnesses for the Northern Plains Resource Council.

Our first witness this morning will be Cannon Richards. He is associate State director of the Bureau of Land Management.

Cannon, wiuld you please take the witness table?

STATEMENT OF CANNON C. RICHARDS, ASSOCIATE STATE DIRECTOR, MONTANA BUREAU OF LAND MANAGEMENT; ACCOMPANIED BY BOB WEBB AND STAN McKEE

Mr. RICHARDS. Bear with me—my glasses broke, so I've got my old ones on—if you would, Senator.

I have a prepared statement that I turned in, and I will try to—it is quite lengthy, so I will try to summarize it, and copies will be made available to anybody who wants them.

I appreciate the opportunity to be here today to discuss the Federal coal leasing in the Powder River region and specifically Montana.

I have both Bob Webb from the Billings office and Stan McKee from the Wyoming office with me, and we will try to answer any questions that you may have on this subject.

The Powder River basin coal reserves of over 140 billion tons comprise nearly 60 percent of all the coal reserves in the West. The production in the Powder River basin in 1980 totaled 104 million tons out of 830 million tons nationally. A third of the region's production came from the Federal leaseholdings, and the regional projected production is estimated to be approximately 370 million tons annually by 1990, without any new leasing.

The planning in this region has been going on since the early 1970's with the initiation of the Decker-Birney study, I think, in 1972. The land use plans have identified approximately 3.3 million acres of coal-bearing lands, or about 42 billion tons of Federal recoverable coal which has been carried forward and acceptable for further consideration of leasing.

In April 1980, a regional coal team was formed which included the Bureau of Land Management, State directors of Wyoming and Montana and representatives of both State governments. The team was to consider and suggest policy for the regional leasing target, guide and review tract ranking in order to recommend alternatives to be analyzed in the regional environmental impact statement. The regional coal team also served as a forum for department and State consultation and submitted recommendations for the Secretary of Interior's decision on regional leasing target in a regional lease sales schedule. A call for expressions of interest was issued from April 2, 1980, to September 15, 1980. During this period, a total of 46 expressions of interest were received with industry identifying over 6.1 billion tons of coal they wanted considered. The Department of Energy has issued updated production goals in January 1981. A new baseline estimate of potential projected production to meet these goals has resulted in an annual supply shortfall ranging up to 40.6 million tons.

The calculation of leasing target in terms of recoverable or inplace reserves was made directly from anticipated annual production shortfall. There are also a total of 67 preference right lease applications, and coal reserves are estimated to be 2 to 2.5 billion tons within these preference right lease applications.

To calculate the lease target baseline, the assumption was made that all 67 preference right lease applications will be leased and produce an approximately 45, 46 million tons annually by 1990. Some of the preference right lease applications may fail the commercial quantities test and would therefore not result in leasing and/or development.

In April 1981 the regional coal team submitted its leasing target recommendations in the range of 1.4, 1.5 billion tons of Federal recoverable reserves. Following the target decision, the tracts were ranked by the regional coal team, and based on these rankings, the regional coal team selected four leasing alternatives for cumulative environmental analysis. In addition to the oral comments presented at public hearings on the draft environmental impact statement, 42 written comments were received from the general public, the coal industry, environmental groups, and Federal, State, and local governments. These comments were considered in preparation of the final

environmental impact statement which was released on December 17, 1981, and the final recommendation of the regional coal team for the Powder River coal region addressed selection, scheduling, and alternative sale procedures.

The recommendations of the regional coal team called for the leasing of 16 lease tracts totaling approximately 2.1 billion tons of Federal recoverable coal reserve, and Secretary Watt is now considering the leasing alternatives and expected to reach a decision this week.

Many of the limitations in the lease target setting process are inherent in the distinction between production goals and leasing target. Production goal estimates estimate the coal needed to be produced to satisfy the market for coal. Leasing targets are set to establish the amount of coal needed to be placed in coal industry hands to enable the marketplace to satisfy coal use demand estimated by the production goals. Although a minimum target level needed to prevent coal production shortfalls can be derived from production goals, the amount of coal needed to be leased to allow the marketplace to function efficiently may be significantly greater. The inherent weakness in the target process means that although production goals may be used to establish the bare minimum required to be leased in order to prevent a shortfall in production, substantial professional judgment must be used in setting a lease target level which will enable the marketplace to function properly and assure the lowest cost coal to the consumer.

The Office of Technology Assessment has recently completed a lengthy study of the development and production potential of Federal coal leases. Chapter 7 of its report contains a special case study of the Powder River region. This part contains the Office of Technological Assessments' violations of the pros and cons of the proposed Federal leasing schedule using the Powder River basin as a case example. The OTA report points out how honest disagreements can arise over the need for leasing.

> Both those who advocate large-scale renewed leasing of Federal coal lands and those who oppose renewed large-scale leasing as being unnecessary at this time use supply-demand projections and potential of current leased reserves as arguments to support their prospective positions.
>
> The disagreements between these two groups are based on differences in what constitute reasonable projections of demand for Western coal, differences in estimates of the time required for bringing a mine into production at full capacity, differences over the acceptable levels of leased reserve inventories needed by an operator to insure competitiveness, and differences concerning the safety margins in leased reserves needed to meet contingencies for higher-than-predicted demands or to meet shortfalls in supplies from other regions.

The research for the Office of Technology Assessment report only addressed the development in production potential of Federal leases. The study was never intended to assess the need for additional Federal coal leasing, and it did not make any such assessment. The question of production potential, while very important, is only one of the factors to be considered in determining the appropriate level of leasing. It cannot substitute for other needed assessments of competition, inventory requirements, forecasting uncertainties, and other factors.

We will continue to work with the Governors of the affected States, the regional coal team, and other interested parties to develop and refine appropriate methods of deriving leasing levels.

Again, I appreciate this opportunity and will be happy to answer any questions.

[The prepared statement of Mr. Richards follows:]

STATEMENT OF CANNON C. RICHARDS, ASSOCIATE STATE DIRECTOR, MONTANA BUREAU OF LAND MANAGEMENT

I appreciate the opportunity to appear here today to discuss Federal coal leasing in Montana.

I will briefly discuss the background and history leading up to a pending decision on what level of Federal leasing should be selected for 1982 sales in the Powder River Coal Production Region in Montana and Wyoming.

The leasing decision affects the prime low-cost coal production region of the United States. The Powder River Basin coal reserves of over 140 billion tons comprise nearly 60 percent of all coal reserves in the West. Coal beds in the Powder River Basin are often in excess of 100 feet thick with little overburden. Surface mining in this region easily enjoys the most favorable ratio of tons of coal per acre disturbed of any region in the country. Federal coal ownership in the portion of the Powder River Region proposed for leasing approximately 80 percent, giving the Federal Government almost total control of coal supply.

Powder River Basin production in 1980 totalled 104.5 million tons out of 830 million tons produced nationally. A third of the region's production came from Federal lease holdings. Regional production is projected to be 370 million tons annually by 1990 without any new leasing. This is based on selective development of 58 additional Federal leases and 67 preference right lease applications as well as development of State and private coal properties. By 1980, over 40 percent of all coal mined in the West could come from Powder River.

COAL LEASE OFFERING FOR THE POWDER RIVER REGION

In April 1980, a regional coal team was formed which included the Bureau of Land Management Sttae Directors of Wyoming and Montana and representatives of the Governors of Wyoming and Montana. The BLM Idaho State Director was appointed to chair the team. The team was to consider and suggest policy for the regional leasing target, tract delineation, and site-specific analysis; guide and review tract ranking; and conduct the selection and sale scheduling process in order to recommend alternatives to be analyzed in the regional environmental impact statement. The Regional Coal Team also served as the forum for Department/State consultation and submitted to the Director of BLM recommendations for the Secretary's decision on a regional leasing target and a regional lease sale schedule.

TRACT DELINEATION AND ANALYSIS

The activities leading to the decision to select and schedule coal lease tracts for competitive sale in the Powder River Region began with the completion of land use planning in that portion of the Region unofficially designated as Eastern Powder River. This area includes Campbell County in Wyoming and portions of Rosebud, Big Horn, and Custer Counties in Montana. The land use plan identified approximately 3.3 million acres of coal-bearing lands, or about 42 billion tons of Federal recoverable coal, which were acceptable for further consideration for leasing.

Following approval of the plans, a call for expressions of interest was issued from April 2, 1980, to September 15, 1980. During this period, a total of 46 expressions of interest were received with industry identifying over 6.1 billion tons of coal. The expressions of interest and other geologic and mining information received were used by the U.S. Geological Survey and the BLM to delineate 26 tracts for potential leasing. Subsequent to the initial delineation effort, two tracts, the Two Top and Ashland (Coalwood) tracts, were divided to create two additional tracts.

The tract delineation reports prepared by the Geological Survey outlined geologic and mining information on the tracts. This information was used to develop a proposed action for consideration in the site-specific environmental analysis prepared for each tract. This analysis addressed the environmental, social, and economic effects of leasing and subsequent potential development of each of the Federal coal tracts.

LEASING TARGETS

On June 4, 1979, the previous Secretary set a tentative Federal leasing target of 776 million tons of in-place coal for the Powder River Region. This tentative target was based on the Department of Energy's medium coal production goal issued in April 1979. The Department of Energy issued updated production goals in January 1981. A new baseline estimate of potential projected production to meet these goals, in the absence of additional new Federal leasing, was developed for analysis as the "no-action" alternative in the Powder River regional environmental impact statement. Subtracting the projected coal production not dependent on new Federal leasing, the baseline, from the range of final Department of Energy coal production goals resulted in an annual supply shortfall ranging up 40.6 million tons.

The calculation of the leasing target, in terms of recoverable or in-place reserves was made directly from the anticipated annual production shortfall. This was accomplished by calculating expected annual production from the various leasing scenarios under evaluation in the environmental impact statement.

A major area of consideration in the calculation of the projected 1990 baseline was the extent to which preference right lease applications would be developed in the region. There are a total of 67 preference right lease applications in the Powder River Region, all of which occur within the State of Wyoming. The total recoverable coal reserves contained in the preference right lease applications are estimated to be 2.0 to 2.5 billion tons. The Powder River environmental impact statement addressed all 67 preference right lease applications as part of the region's projected baseline or "no-action" alternative. To calculate the lease target baseline, the assumption was made that all 67 pereference right lease applications will be leased and producing approximately 45.6 million tons annually by 1990. The preference right lease production figures attempt to present a "worst case" scenario for the environmental impact statement and assume maximum impacts from approval and development of all preference right lease applications. If all of the preference right leases are issued, maximum impact would likely occur from 1995 onward when it is assumed the preference right leases will be producing 97.5 million tons annually at capacity. Some of the preference right lease applications may fail the commercial quantities test and would, therefore, not result in leases or development.

In April 1981, the Regional Coal Team submitted its lease target recommendation to the Director of Bureau of Land Management. The recommendations set a leasing level in the range of 1.4 to 1.5 billion tons of Federal recoverable coal reserves. The recommended 1.4 to 1.5 billion tons level was accepted by the Assistant Secretary for Land and Water Resources as the leasing target; however, he reserved the option of increasing the leasing level if the recommended target proved inadequate to meet regional demands.

ENVIRONMENTAL ANALYSIS

Following the target decision, the tracts were ranked by the Regional Coal Team according to attributes in three categories: environmental impacts, coal economics, and socioeconomic impacts.

Based on these rankings, the Regional Coal Team selected four leasing alternatives for cumulative environmental analysis. Public scoping meetings were held in potentially impacted areas of Wyoming and Montana to identify issues for special consideration in the environmental analysis. The draft environmental impact statement was prepared and released to the public in July 1981. In addition to oral comments presented at public hearings on the draft environmental impact statement, 42 written comments were received from the general public, the coal industry, environmental groups, and Federal, State, and local governments. These comments were considered in preparation of the final environmental impact statement, which was released on December 17, 1981.

The environmental impact statement revealed that, compared to the maximum in the alternative, over 75 percent of the resulting impacts would occur under projected 1990 baseline development. In other words, only 25 percent of the total impacts from coal development in 1990 would result from additional Federal leasing at the maximum level. The most significant impacts would be to the incorporated community of Ashland, Montana. Other identified impacts can be mitigated or are considered insignificant. It should be noted that the city of Gillette, Wyoming, in its comments on the draft environmental impact statement, recommended high leasing levels to insure sustained community growth.

RECOMMENDATION OF THE REGIONAL COAL TEAM

The final recommendation of the Regional Coal Team for the Powder River Coal Region addressed selection, scheduling, and alternative sale procedures. The recommendation of the Regional Coal Team called for the leasing of 16 lease tracts totalling approximately 2.1 billion tons of Federal recoverable coal reserves.

CONSULTATION

Consultation letters were sent to the Governors of Montana and Wyoming as well as the Department of the Justice and the Northern Cheyenne Tribe.

Responses from Wyoming Governor Herschler and from Governor Schwinden of Montana supported the recommendation of the Regional Coal Team for leasing 16 tracts representing 2.1 billion tons of coal in a phased leasing schedule.

The Department of Justice commented that not enough tracts had been delineated, but it was pleased with the Regional Coal Team recommendation to lease all but two of the delineated tracts. Justice concluded that the Regional Coal Team recommendation should be adopted and more tracts should be delineated for future leasing in the basin.

The reply received from the Northern Cheyenne Tribe was a comment on the environmental impact statement. The Tribe asked that its input be requested during the planning for mine locations. The Tribe stated that the opening of new mines in close proximity to the reservation would have a direct impact on its members. The improvement in the economic base of the area and the potential for employment would be beneficial. The influx of outsiders and the fact that the tribe would not be the recipient of impact funds were negative factors.

LEASE TRACT SELECTION AND SCHEDULING

A number of leasing alternatives are available for selection by the Secretary, from no leasing to leasing a maximum of 18 tracts, including possible tract combinations. Also subject to decision is the timing of the lease sale, which tracts should be offered as set-asides for small business competition, and alternative sale procedures which can be used. Secretary Watt is now considering the leasing alternatives and is expected to reach a decision this week.

LIMITATIONS ON THE LEASE TARGET SETTING PROCESS

Many of the limitations in the lease target setting process are inherent in the distinction between production goals and leasing targets. Production goals estimate the coal needed to be produced to satisfy the market for coal. Some examples are coal for utility boilers, export and synfuels industrial use. Leasing targets are set to establish the amount of coal needed to be placed in coal industry hands to enable the marketplace to satisfy coal use demand estimated by production goals. Although a minimum target level needed to prevent coal production shortfalls can be derived from production goals, the amount of coal needed to be leased to allow the marketplace to function efficiently may be significantly greater. For an efficient market, coal companies must have an inventory of potential properties from which to draw.

The baseline estimate from which the shortfall estimate has been derived does not address economic efficiency. Field personnel estimate that coal production costs of many of the preference right leases will be higher than those coal production costs associated with tracts that were delineated during the activity planning process. One may, therefore, assume that a substantial percentage of the potential production credited to preference right leases in the baseline would fail to materialize as additional lower cost leases were made available over and above those needed to meet the shortfall. These inherent weaknesses in the target process mean that although production goals may be used to establish the bare minimum required to be leased in order to prevent a shortfall in production, substantial professional judgment must be used in setting a lease target level that will enable the marketplace to function properly and assure the lowest cost coal to the consumer.

REPORT BY THE OFFICE OF TECHNOLOGY ASSESSMENT

The Office of Technology Assessment has recently completed a lengthy study of the development and production potential of Federal coal leases. Chapter 7 of its report contains a special case study of the Powder River region. The most

relevant portion of that chapter is the part entitled "Implications for New Leasing." This part contains OTA's compilation of the pros and cons of the proposed Federal leasing schedule, using the Powder River basin as a case example. The section entitled "The Case in Support of Large Scale Leasing in the Near Future," lists the following major reasons in favor of leasing:

"Proponents of immediate Federal leasing contend that leasing targets should be geared to allow margins for unanticipated increases in demand or unforseen shortfalls in production because of the failure of some planned capacity to come on line. For example, if only 6 out of the 17 undeveloped properties contributing to the 350 million tons per year of capacity in 1990 should fail to be developed, capacity in that year could be reduced by as much as 60 million tons per year, to 290 million tons per year."

The 1990 demand for Powder River basin coal could be somewhat higher than OTA's, most likely estimate, if several events were to occur:

If electrical demand grew faster than anticipated;

If boiler conversions from oil and gas to coal occurred more rapidly than expected;

If synthetic fuels development came online faster than projected;

If foreign export of coal grew more rapidly than anticipated; or

If Powder River basin coal captured an even larger share of the domestic market than anticipated.

A second consideration advanced in support of additional Federal coal leasing in the Powder River basin is the potential for stimulating competition within the coal industry. Both the Department of Justice (DOJ) and the General Accounting Office (GAO), in reports issued in 1980, criticized the setting of lease targets as being inefficient and potentially anticompetitive because targets attempt to match the amount of Federal coal leased to the amount required to meet given projected demand. DOJ's report concludes that a target leasing system unduly supplants the marketplace as the allocator of coal resources.

* * * * * * *

"The third factor cited by those advocating immediate renewed leasing of Federal coal is the need for creating a coal of reserves well in advance of planned by the industry and to accommodate the 10-year (no longer) leadtime from lease sale to full production."

OTA also lists the major arguments for postponing leasing:

"Those opposing renewed Federal coal leasing in 1982 in the Powder basin cite three reasons for deferring the lease schedule:

"1. The currently operating Federal and non-Federal mines, plus the good quality properties being actively developed and the PRLAs that may be developed in the future will provide substantially more capacity than will be needed between 1990 and 1995;

"2. Slower leasing is needed to allow sufficient time for adequate planning for leasing by DOI; and

"3. Slower leasing would better match the capability of the State, regional, and local governments to deal with the socio-economic impacts of development."

After analyzing these arguments, the Department reached the same conclusion: there is a need to resume leasing of Federal coal lands. This determination has remained constant throughout the last three administrations in Washington.

The arguments for postponing leasing have not been persuasive. The OTA report on pages 190 and 191 points out how honest disagreements can arise over the need for leasing:

"Both those who advocate large-scale renewed leasing of Federal coal lands and those who oppose renewed large-scale leasing as being unnecessary at this time use supply-demand projections and potential of current leased reserves as arguments to support their respective positions. The disagreements between those two groups are based on:

"1. Differences in what constitute reasonable projections of demand for Western coal;

"2. Differences in estimates of the time required for bringing a mine into production at full capacity;

"3. Differences over the acceptable levels of leased reserve inventories needed by an operator to ensure competitiveness; and

"4. Differences concerning the safety margins in leased reserves needed to meet contingencies for higher-than-predicted demands or to meet shortfalls in supplies from other regions."

Other agencies have also analyzed the Federal coal leasing situation and concluded that the proposed leasing levels were too low. The Department of Justice, the Department of Energy, the General Accounting Office, and the Council on Wage and Price Stability all concluded that the Interior Department was not proposing to lease enough coal to meet the Nation's needs.

It is important to note also that the research for the Office of Technology Assessment report only addressed the development and production potential of Federal coal leases. The study was never intended to assess the need for additional Federal coal leasing, and it did not make any such assessment. The question of production potential, while very important, is only one of the factors to be considered in determining the appropriate level of leasing. It cannot substitute for other needed assessments of competition, inventory requirements, forecasting uncertainties, and other factors. The Department is well aware of the research effort that remains to be done on these topics.

We will continue to work with the Governors of the affected States, the regional coal team, and other interested parties to develop and refine appropriate methods for deriving leasing levels. We would appreciate any support which would be forthcoming in this endeavor.

Again, I appreciate the opportunity to appear before this Committee to discuss our Federal Coal Leasing Program, and would be happy to answer any questions which you may have.

Senator MELCHER. Well, my first question goes to a major point, the canon affecting the owners of the land under which this Federal coal lies. What is the impact of any change in the regulations that the Secretary may be considering on the surface owner's consent?

Mr. RICHARDS. I don't know of any, John. We have to have the surface owner's consent to lease. We have gone to the consultation process, and we are working on clearing these specific tracts for surface owner consent now.

Senator MELCHER. Is there anything in the drafting stage or pondering stage within the Department on changing the regulations?

Mr. RICHARDS. None that I know of.

Senator MELCHER. Would you be aware of it if there were any consideration being given to making some changes with regard to the surface owner's consent?

Mr. RICHARDS. Probably. We are having tremendous problems in trying to adjudicate the surface owner consent in which case the surface owner gives consent to a company or third party or broker and then trying to act as the middleman and adjudicate that this is, in fact, a transferable document. And if there is any consideration of redoing the regulations, it would probably be in those areas.

Senator MELCHER. What problems have arisen on surface owner's consent?

Mr. RICHARDS. Well, on the proposed sales of Montana, the problems arise in the adjudication of the document that the original surface owner has either given to a coal company or a broker and has gone through various hands.

Senator MELCHER. What does that mean specifically?

Mr. RICHARDS. It means that the surface owner has given consent to mine, but is it a transferable document so that the tract can be put up for competitive sale? And each document or each contract seems to be different.

Senator MELCHER. Does each contract that you peruse truly allow the flexibility in the decision process to be placed with the surface owner?

Mr. RICHARDS. I guess I'm not so sure that I understand the question, because——

Senator MELCHER. The intent of the language is to allow the surface owner to say no, he doesn't want the coal mined under his land.

Mr. RICHARDS. In all cases, the surface owner has said yes. He has given consent to some company. The question is in the transferability of this document should another company bid highest.

Senator MELCHER. Has there been any indication that the surface owner in any way is misled to his or her right to say, "No, I don't want my land disturbed"?

Mr. RICHARDS. I wouldn't have any knowledge of that. That would simply be between the surface owner and the parties or company involved, and I would have no knowledge of that.

Senator MELCHER. And you've had no complaints?

Mr. RICHARDS. No.

Senator MELCHER. None at all?

Mr. RICHARDS. None that I can recall. There may be complaints between those two parties of that contract, but——

Senator MELCHER. No compliants have been brought to you?

Mr. RICHARDS. No.

Senator MELCHER. Have any complaints been brought to you on the regulations that the Secretary promulgated after the enactment of the act?

Mr. RICHARDS. None that I know of specifically on all of the meetings that we have held on. There's been pros and cons on almost every one of them, but I don't know of any specific complaints one way or another.

Senator MELCHER. Well, what are the cons that you've heard?

Mr. RICHARDS. Well, they're generally in the areas of more leasing or less leasing or no leasing. Some people are——

Senator MELCHER. No, I mean just on the question of the surface owner.

Mr. RICHARDS. None.

Senator MELCHER. None?

Mr. RICHARDS. None.

Senator MELCHER. How much Federal coal is now leased in the Powder River basin?

Mr. RICHARDS. I think about 830 million tons. This is on the Montana side.

Senator MELCHER. On the Montana side. Do you know how much coal is leased on the Wyoming side?

Mr. RICHARDS. No, but——

Senator MELCHER. Would Mr. McKee know?

Mr. RICHARDS. McKee?

Senator MELCHER. Why don't you come right up to the witness table, and Mr. Webb, also.

Mr. MCKEE. As far as your question, sir, on the Montana-Wyoming side, I'm not really sure right at this point. I can get that information for you and send it to you at a later time. I believe that it's somewhere around 900 million to 1 billion tons.

lease in the Powder River Basin?

Mr. MCKEE. I can't say for sure, sir. We can furnish that later for the record if you wish.

Senator MELCHER. So approximately 1.8 billion tons is now under lease in the Powder River basin?

Mr. McKee. I can't say for sure, sir. We can furnish that later for the record if you wish.

Senator Melcher. I just want an appproximate figure. Cannon says he knows that 800-some million tons have been leased on the Montana side; I just want a ball park figure here. One and a half billion tons is already under lease; is that about right?

Mr. McKee. Approximately, sir, yes.

Senator Melcher. Will some of the coal which you've just identified not be mined?

Mr. Richards. On the Montana side, I know of none that will not be mined, considering some pieces or additional maintenance type leases that some of them might be involved in.

Senator Melcher. Has a——

Mr. Richards. Approximately 10 percent of it already has been mined.

Senator Melcher. Ten percent out of that 1.5 billion tons?

Mr. Richards. Out of the 800 million in Montana.

Senator Melcher. Is that about the same in Wyoming?

Mr. McKee. Approximately the same.

Senator Melcher. Now has any of it been identified by the Department of Interior as unsuitable for mining because it won't be reclaimed properly or there are other values that can't be met if it were mined?

Mr. Richards. No.

Senator Melcher. Has it been reviewed yet?

Mr. Webb. Part of it has been reviewed.

Senator Melcher. Has that immunized the amount of coal to be leased?

Mr. Webb. In the most recent review that's being undertaken in the Powder River, there's a 40-acre tract at Decker that is currently being reviewed that I'm aware of, and I believe that about 6 acres of that has been determined unsuitable. I don't recall the statistic from the prior evaluations.

Senator Melcher. At what point will it be reviewed by the Department of Interior? When there is some objection made to it by a State?

Mr. Richards. That will come up at the permitting process and generally it will run into very specific sites associated with archeological concerns or something of that nature.

Senator Melcher. Of the approximate 1.5 billion tons by coal already under lease in the Powder River basin, how much has been apportioned for mining within the next decade?

Mr. Richards. Well, I think most all of the projections as it relates to production, the high projection for 1990 they all seem to be around 40 million tons a year. They vary from——

Senator Melcher. Whose projection is that?

Mr. Richards. This is DOE's and the Technological Assessment. I think their high estimate was 370.

Senator Melcher. What about companies? What's their estimate?

Mr. Richards. I don't know what the companies' estimate is. The companies' estimate is figured in that OTA report.

Senator Melcher. I've got the OTA report here, and it is not clear to me that the companies know what they are going to do.

Mr. Richards. Well, the OTA demand projections show 275 million tons, and to my knowledge, John, that was based on discussion

with all the companies in the proposed contracts. Now how much of it will actually be produced, I don't know.

Senator MELCHER. Did the coal team try to assess what company intentions were?

Mr. RICHARDS. Well, in the assessment of the baseline averages, we assumed that existing mines would move out. We had assumed the existing preference right leases would move out, and we have used the estimates of the Department of Energy.

Senator MELCHER. The Department of Energy made an estimate, you mentioned, in the beginning of 1981. I question how they arrived at this estimate sometime in 1980. What did they estimate would be actually mined in the Powder River basin during 1981?

Mr. RICHARDS. I don't have the figure for 1981. We have the actual coal mined in the Powder River basin of 1980, 104 million tons.

Senator MELCHER. But one for 1981?

Mr. RICHARDS. We don't have the 1981 figure.

Senator MELCHER. Well, the companies testifying here today should be able to provide us with that data.

Cannon, I think you used a figure of 370 million tons per year production. Is that total Federal coal, or is it Federal coal in Powder River basin, or where is it?

Mr. RICHARDS. That would be total production.

Senator MELCHER. Total Federal coal?

Mr. RICHARDS. From private, State, Federal, and how much of that particular production would be Federal would be dependent upon any particular mine.

Senator MELCHER. Where would the 370 million tons to which you referred be located?

Mr. RICHARDS. In the entire Powder River basin, primarily in the Gillette areas and——

Senator MELCHER. Just in the Powder River Basin?

Mr. RICHARDS. In the Powder River, yes.

Senator MELCHER. Wasn't the total production in Montana from all sources around 40 million tons last year?

Mr. RICHARDS. I think it's closer to 30.

Senator MELCHER. Closer to 30 million tons?

Mr. RICHARDS. Powder River only is 30. We have some up at the northeastern part, Savage, in that area.

Senator MELCHER. What was the total production in Wyoming last year?

Mr. RICHARDS. It would be the difference between the 30 and the 104 in the Powder River region.

Senator MELCHER. About 70?

Mr. RICHARDS. About 70.

Senator MELCHER. When would it be likely, then, that 370 million tons would be produced in any 1 year out of the Powder River basin? After all, that's almost a fivefold increase from what is currently produced.

Mr. RICHARDS. Well, it would—the estimates are based on 1990, and as existing mines would expand to meet it and new mines would come on line, this takes approximately 10 years. What particular time that would hit would depend upon several factors.

Senator MELCHER. 1990 is only 8 years away. What new mines are proposed?

Mr. RICHARDS. Well, on the Montana side, of course, we have the three proposed sales here to Cook Mountain, to Coal Creek, and to Northwest Otter, and also have ventures going on in the Squirrel Creek mine and the Pearl mine, Shell Oil Co., and the CX Ranch.

Senator MELCHER. Where is Shell Oil's proposed mine?

Mr. RICHARDS. It's in the Pearl area. It's northwest of Decker.

Senator MELCHER. On the Crow Reservation?

Mr. RICHARDS. Toward the Crow Reservation. More west than north.

Senator MELCHER. Is Crow coal included as Federal coal?

Mr. RICHARDS. Am I?

Senator MELCHER. Yes, are you including Crow coal as a component of the Federal coal?

Mr. RICHARDS. No. No, sir.

Senator MELCHER. Then it doesn't have anything to do with this 370 million tons?

Mr. WEBB. There is a Federal lease outstanding to Shell that would relate to that off the reservation area, and it would be a minor percentage compared to the amount of coal that's on the reservation.

Senator MELCHER. Then we might as well forget about it. Where else is there a proposed mine of used Federal coal?

Mr. RICHARDS. Those associated probably with the recent legislation on the Cheyenne contracts; the Greenleaf Miller, and there is one, probably the Hanging Woman, Morehead. These areas would be under consideration.

Senator MELCHER. Have any of them presented a mining plan?

Mr. RICHARDS. No, sir. Not to my knowledge.

Senator MELCHER. Is the only mining plan that's proposed——

Mr. RICHARDS. There is one exception, and I think Montco has an application in to the State.

Senator MELCHER. That's the only one?

Mr. RICHARDS. To my knowledge, yes.

Senator MELCHER. There's something going on in Wyoming that would indicate that a new mine is being opened?

Mr. MCKEE. Yes, sir.

Senator MELCHER. Which ones are those?

Mr. MCKEE. In the baseline to the Powder River environmental impact statement, we have calculated existing mines within the region, both for Wyoming and Montana. We also factored in new mines likely to go into production, those that have filed mine plans.

Senator MELCHER. Which mines are those?

Mr. MCKEE. Do you want the ones in both States, sir?

Senator MELCHER. Yes.

Mr. MCKEE. OK. The new mines that we're projecting are Campbell County: Buckskin, Shell Oil; Coal Creek, Arco; Dry Fork, Cities Service; East Gillette, Kerr McGee; North Rochelle, Rochelle Oil Co.; Crown Horn, Mobil; Rochelle, Rochelle Oil Co.; Rojo Caballo, Mobil Oil; South Rawhide, Carter-Erron; Wildcat Creek, Gulf Oil; WyMo Fuels Mine, WyMo Fuels, Inc. In Sheridan County: Ash Creek. Public Service of Oklahoma; Black Mountain, Black Mountain Coal; and

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the Dutchman, JMT Co. In Converse County: Nerco Mine, Antelope, the Nerco-Antelope mine.

Senator MELCHER. Have these mine operators applied?

Mr. MCKEE. Yes, sir.

Senator MELCHER. They have all applied for a mining plan?

Mr. MCKEE. In Montana.

Senator MELCHER. You are certain these companies have all applied for a mining plan?

Mr. MCKEE. Yes, sir.

Senator MELCHER. I'm not talking about the lease. I'm talking about whether they've all applied for a mining plan?

Mr. MCKEE. These are all existing leases.

Senator MELCHER. These are all existing leases?

Mr. MCKEE. Yes, sir.

Senator MELCHER. These plans don't entail opening new mines; they are just expansion?

Mr. MCKEE. They're both. They're opening new mines. They have a Federal lease, but they are in the process now of opening, either opening a new mine or expanding an existing mine.

Senator MELCHER. Which ones are the new ones?

Mr. MCKEE. I have no idea, sir, without looking. Again, I can check it when I get back to my office and have it submitted.

Senator MELCHER. Now of all of these, which mining plans are in Montana?

Mr. MCKEE. I haven't read Montana yet, sir.

Senator MELCHER. OK.

Mr. MCKEE. The Montco Nance mine is the one that we had for Montana in Rosebud County.

Senator MELCHER. That's the only one?

Mr. MCKEE. Then we also had—we considered preference right lease applications and then other mining development within the Powder River basin. The other coal operations that we considered in Montana were the CX Ranch, Consol; CX Ranch, Peter Kiewit; and Greenleaf Miller, which is Peabody.

Mr. RICHARDS. The only one to my knowledge, as far as the application process, is the Montco mine.

Senator MELCHER. The only one that has actually filed?

Mr. RICHARDS. Filed a permitting process with the State, yeah.

Senator MELCHER. How many years does it take from the time of filing until the time of actually mining a ton of coal?

Mr. RICHARDS. They're talking in terms of a decade now in opening a new mine. They have been in since 1973 and haven't seen one open yet in Montana. It would depend upon the particular million factor, but they estimate approximately 10 years.

Senator MELCHER. If we're going to reach 370 million tons by 1990, which is a little over 8 years away, how much of that 370 million tons would be in Montana, then?

Mr. MCKEE. Just a moment, sir, and I'll calculate it. For the 1990 timeframe?

Senator MELCHER. Well, I'm just using the testimony timeframe. I am told that 370 million——

Mr. RICHARDS. We don't have that breakdown. That is for the Powder River basin, and that is the high production estimate as put out

by the Department of Energy, and how much of it would come from Montana, I imagine, would depend upon permitting factors and where the leases were.

Senator MELCHER. Is a portion of the 370 million tons that you're working with in Montana or not?

Mr. RICHARDS. Certainly.

Senator MELCHER. Let me confirm this. The Montco mine is the only mine for which there is an application in Montana. It might be in operation by 1990 if 10 years is the length of time for processing a mining application. It seems to me that given the time it takes to process the application, the production of 370 million tons as estimated, is unlikely.

Mr. RICHARDS. When you talk in terms of 10 years, I think some of that time has already gone on, Senator. I think that could be generally from the time you decide to lease.

Senator MELCHER. Is there any other application that's being prepared and has been processed to the point of actually filing the application with the State for approval?

Mr. RICHARDS. Well, anything that is leased could go right to the State for State permits. They can submit their plan.

Senator MELCHER. I am interested specifically with the expansion of the existing mines. What's the estimate for the expansion of the existing mines?

Mr. RICHARDS. I don't know, of each particular mine, what their expansion mines are, sir.

Senator MELCHER. Would it be reasonable to believe that with a 30-million-ton production in 1981 of Federal coal in the Powder River basin, I guess—is that 30 million, by the way, is that all Federal coal, or is part of it Burlington coal?

Mr. RICHARDS. It would be both Federal and private.

Senator MELCHER. Both Federal and private?

Mr. RICHARDS. That's production.

Senator MELCHER. That's production. How much of it is Federal?

Mr. RICHARDS. I don't have that breakdown. Would you like us to furnish that?

Senator MELCHER. Yes, I think it would be useful to have that information. I assume that most of it is Federal coal, but we ought to know about how much is.

I would like to point out that even if the existing mines would double their production within the next 8 years, the level of production would still only be about 60 million tons in combination of Federal and private coal or State coal. That doesn't approach the figure of 370 million tons. If the opening of this list of new proposals in Wyoming would actually take place, I suppose we would then at most be talking about 50 or 60 million tons of coal being produced. That amount is still substantially less than 370 million tons of coal.

What consideration was given for the innermix of privately owned coal with the Federal coal?

Mr. RICHARDS. I think a lot of that would have shown up or did show up in the industry interest, and it's a mix of both the private, the State, and the Federal, and any given operation that they would have to consider, but how much of it would be Federal or how much private, I wouldn't have that breakdown for any given year. It would

tend more to be on a minable area rather than a particular ownership that was in it for a continuous stripmining operation, the recoverable reserve.

Senator MELCHER. Mr. McKee, don't many of these new proposals for mines in the Powder River basin in Wyoming already have leases?

Mr. MCKEE. I don't understand your question.

Senator MELCHER. You listed about a dozen proposals for new mines in Wyoming in the Powder River basin area.

Mr. MCKEE. Yes, sir.

Senator MELCHER. Don't most of those mines already have a Federal lease for coal?

Mr. MCKEE. Some are extensions, sir. Some are new mines.

Senator MELCHER. Of the new mines, don't many of them already have a lease for Federal coal?

Mr. MCKEE. Sir, all of those I read have a lease for Federal coal.

Senator MELCHER. Without a new sale?

Mr. MCKEE. Sir, there're existing leases. They've been—some of them have been in existence for quite some time.

Senator MELCHER. Yes.

Mr. MCKEE. They're coming into production now.

Senator MELCHER. At what point would they need another new lease, then?

Mr. MCKEE. Upon the expiration of their current lease term.

Senator MELCHER. And when is that projected?

Mr. MCKEE. Well, that, Senator, is depending on when the lease was issued, depending on the readjustment period, but they still, most of those leases still have diligence requirements on them. Some do not, but most do.

Senator MELCHER. Most of them have diligence requirements on them. Isn't it true that this upcoming Federal coal lease sale will offer a number of new leases?

Mr. MCKEE. Yes, sir, that's correct.

Senator MELCHER. The sale is not related to the extension of the other leases that they now hold?

Mr. MCKEE. No, sir. Well, in some cases, they're adjacent to.

Senator MELCHER. It is still unclear to me who is going to need this new leasing, the new leases, and when the sites are going to be mined. I understand they will all be subject to the diligence requirement.

Mr. MCKEE. All the new leases will, yes, sir.

Senator MELCHER. Is it clear to the coal team when this is going to be mined? It certainly isn't clear to me.

Mr. RICHARDS. I don't think, Senator, any particular mine would be clear to anyone, and each one of these leases will have diligence requirements as diligence is now defined, but the actual marketplace is going to determine how much coal is going to be mined and actually which mines will do it. But one of the things associated with this coal program is that, quite frankly, the companies have to have access to the resource and/or leases in hand, before they can go to the user groups and get into the competitive arena, into the marketplace, and——

Senator MELCHER. Let's just assume a company got a new lease in April of 1982. That's the month after next. At what point would they have to be mining that in order to comply with the diligence requirement?

Mr. RICHARDS. They would have to file a mining plan within 3 years and mine 1 percent of the coal in the next 10 years.

Senator MELCHER. So we're talking about 1½ billion tons under lease in the basin right now.

Mr. RICHARDS. Yes.

Senator MELCHER. And you're using a 1980 figure projected by the Department of Energy which suggests that 370 million tons might be mined of federally owned coal during the next decade?

Mr. RICHARDS. Total coal.

Senator MELCHER. Total coal in the basin. Does that include Indian coal?

Mr. RICHARDS. Total coal. Yes, if the Indian coal were on the market, it would include it.

Senator MELCHER. What was the basis for the estimate? Does that include all uses?

Mr. RICHARDS. All uses.

Senator MELCHER. All uses including private, public, and Indian. Therefore, all Federal, Indian, or private coal mined would be added to that 1½ billion tons of Federal coal ready under lease.

Mr. RICHARDS. Yes.

Senator MELCHER. And even though there were 104 million tons of coal mined in 1980 out of the Powder River basin, you estimate that 370 million tons would be mined by 1990 per year out of the basin. It seems to me that with 1.5 billion tons already under lease of Federal coal and add to that the private coal and add to that the Indian coal that might be mined during the next decade, we have already got more leased than could conceivably be mined.

Mr. RICHARDS. There will be more leases issued than there will be coal development.

Senator MELCHER. I understand that.

Mr. RICHARDS. And again, one of the major factors——

Senator MELCHER. But if you issue a coal lease in 1982, and, a month after next as you have proposed, then will they have 3 years to mine 1 percent of the recoverable reserves?

Mr. RICHARDS. They'd have to file a mining plan in 3 years, 1 percent to be mined in 10.

Senator MELCHER. One percent to be mined in 10. So won't this lead to a saturation of our supply to the extent that the demand for coal either has to be speculative or very low?

Mr. RICHARDS. This is true, Senator, and I think what we're coming to is that some of these leases well may or may not be developed. They may not meet the diligence requirements. They may give them up. But the point is for them to enter the market arena, the free market arena, they have to have access to the resource first.

Senator MELCHER. All right. Now tell me who "they" are.

Mr. RICHARDS. I would say any major coal company who is talking to the end-product user, whether it be the utility company or whatever. When I say "they," it would be Consol, Peabody, anybody who wanted to get into the coal business.

Senator MELCHER. Earlier you mentioned export coal and synfuels, is that not correct?

Mr. RICHARDS. Yes.

Senator MELCHER. Is there any indication of a synfuel plant in the Powder River region?

Mr. RICHARDS. To my knowledge, no. I think in the 370 million tons there was no consideration of a synfuel plant in Powder River.

Senator MELCHER. All right. Has there been any consideration given to fulfilling our export needs?

Mr. RICHARDS. Not to my knowledge. I don't know everything that went into some of the models that the Department of Energy used, though.

Senator MELCHER. I am seeking some additional clarification. The first estimate that the regional coal team offered for this lease sale would be 1.4 billion or 1.5 billion tons. Does the estimate provided in the testimony you've given today take into account the Justice Department and the General Accounting Office's position on this matter?

Mr. RICHARDS. Yes, sir. They have all commented on that, and the decision was made and discussed through all of the comments from all of these people. The coal team upped their estimate to 2.1 billion.

Senator MELCHER. You mentioned that the Secretary of the Interior is going to reach a decision this week.

Mr. RICHARDS. This is scheduled. It could concern both the tonnage and the tracts.

Senator MELCHER. Well, I am not aware of the urgency of the Secretary reaching a decision this week, but can you explain to me what the urgency is?

Mr. RICHARDS. It just would be the process and schedule has been set up. He certainly has the latitude to accelerate or defer this decision.

Mr. WEBB. I think maybe what the point here would be, that if the recommended sale dates that the coal team recommended, starting in April, would be met, that we'd need a decision from the Secretary about this week in order to set up the advertising period and that sort of thing. Is that what you're thinking of, Senator?

Senator MELCHER. Yes.

Mr. RICHARDS. That would be the schedule they have set up.

Senator MELCHER. Now is there any mine right now in the basin that is getting close to needing a lease readjustment?

Mr. RICHARDS. I think the maintenance tracts that are proposed would fall in that category, in various stages.

Senator MELCHER. Is the Secretary recommending some regulation? It seems to me I recall that some regulations were put in the Federal Register to change the procedures for getting the extensions approved in a timely fashion for an ongoing mining operation.

Mr. RICHARDS. I know there's been discussion of it. I don't know what the specifics are of the changes. Hopefully it will simplify them when they're in the maintenance type category.

Senator MELCHER. Yes, I would hope it would simplify the process also, but the comments I have heard suggest that the proposed regulations were going to complicate the procedure further.

Mr. RICHARDS. I would hope not because I know of instances that coal has been bypassed for lack of maintenance leasing.

Senator MELCHER. Have any of the leases that now exist in the list of mines that you read off to me, Mr. McKee, have an approved mining plan in the State of Wyoming?

Mr. MCKEE. Well, I read you a couple of lists, Senator. The ones where it had mining plans that were in processing at this time?

Senator MELCHER. Have any of the mines to which you referred been approved?

Mr. MCKEE. I think one or two of them, sir. I can't answer with any specificity on them at this point. Again, I could find out that information and let you know.

Senator MELCHER. Yes, we'd like to have that for the record.

We now get to the next point; how extensive are transportation facilities in the Powder River Basin? Do we have the capacity to handle an increase in mining activity?

Mr. RICHARDS. On the Montana side, we have the proposal for the Tongue River Railroad, and other than that, it would be BN. Just BN facilities, and I don't know what the status of any proposed slurry line legislation may be.

Senator MELCHER. It's pretty dead right now. The slurry line proposal is not likely to be considered by the Senate Energy Committee in this Congress. So I think we're talking about rail transportation. Has the coal team found that—if 200 million tons of coal—the level of production in the Powder River Basin, were mined, there would be adequate transportation?

Mr. RICHARDS. The environmental impact statement on transportation didn't indicate any problem with moving that kind of tonnage.

Senator MELCHER. 200 million tons?

Mr. RICHARDS. Yes. More problems would be in the area of highway development and local impacts, especially in the Ashland areas, were these developed.

Senator MELCHER. You're talking about the MONTCO mine?

Mr. RICHARDS. I'd be talking about the MONTCO mine or Cook Mountain, Coal Creek, Northwest Otter Creek. All of those, were they developed, the biggest impact would be right there in the Ashland area, of the entire basin.

Senator MELCHER. Thank you very much, Cannon and Mr. McKee and Mr. Webb. I wish you would stay present because we may have more questions for you later after we've heard from other witnesses.

Mr. RICHARDS. I didn't hear you. You want us to stay here?

Senator MELCHER. Yes, I wish you would.

Mr. RICHARDS. Certainly.

Senator MELCHER. We may have some more questions of you later on.

Mr. RICHARDS. Thank you.

[Subsequent to the hearing the subcommittee received the following:]

Powder River Coal Region - Table 1

Mine	1981 Production (millions of tons) Federal Leases	Private & State	Total
	Montana[1/]		
Absaloke (Westmoreland)	0	5.394	5.394
Big Sky (Peabody)	1.871	1.312	3.183
Coal Creek (Tonnemaker)	0	0.761	0.761
Colstrip (Western Energy)	5.757	4.602	10.359
Decker (Decker)	4.977	6.314	11.291
Spring Creek (NERCO)	3.456	-	3.456
TOTAL MONTANA	16.061	18.383	34.444
	Wyoming[2/]		
Belle Ayr (AMAX)	15.257	-	15.257
Big Horn (Peter Kiewit & Son)	-	2.754	2.754
Black Thunder (Thunder Basin Coal Company)	14.695	-	14.695
Buckskin (Shell Oil Company)	0.306	-	0.306
Caballo (Carter-Exxon)	-	3.524	3.524
Clavis Point (Merr-McGee)	-	3.672	3.672
Cordero (Cordero Mining - Sunedco)	8.313	-	8.313
Dave Johnston (NERCO)	3.627	-	3.627
Eagle Butte (AMAX)	8.145	-	8.145
Ft. Union (Ft. Union Mine Partnership)	-	0.035	0.035
Jacobs Ranch (Merr-McGee)	8.722	-	8.722

(Table 1 - cont.)

Mine	1981 Production (millions of tons) Federal Leases	Private & State	Total
North Rawhide (Carter-Exxon)	6.154	-	6.154
Wyodak (Black Hills Power and Light)	2.713	-	2.713
TOTAL WYOMING	67.932	9.985	77.917

1/ Fiscal Year 1981
2/ Calendar Year 1981

Source: BLM, Montana Department of Revenue, Research and Information and Wyoming State Geological Survey, 1982.

Table 2

Powder River Coal Region Non-Producing Mines
With Mining Permits

Location and Name	Production (Million Tons) 1981	1990
Montana		
Big Horn County		
+ CX Ranch (CONSOL)	--	8.0
+ CX Ranch (Peter Kiewit)	--	4.0
Rosebud County		
+ Monco-Nance (Montco)	--	9.0
Wyoming		
Campbell County		
* Coal Creek (ARCO Coal Company)	--	10.0
* Dry Fork (Cities Services Company)	--	8.0
* East Gillette (Kerr-McGee)	--	11.0
+ North Rochelle (Shell Oil Company)	--	8.0
* Pronghorn (Mobil Oil Company)	--	5.0
* Rochelle (Rochelle Coal Company)	--	11.0
* Caballos Rojo (Mobil Oil Company)	--	15.0
* South Rawhide (Carter-Exxon)	--	7.0
* Wildcat Creek (Gulf Oil Company)	--	10.0
* Wymo Fuels Mine (Wymo Fuels, Inc.)	--	4.4
Sheridan County		
* Ash Creek (Public Service of Oklahoma)	--	.5
* Black Mountain (Black Mountain Coal)	--	.5
* Dutchman (JMT Company)	--	2.0

(Table 2 - cont.)

Powder River Coal Region Non-Producing Mines
With Mining Permits

Location and Name	Production (Million Tons) 1981	1990
Converse County		
+ Antelope (NERCO)	--	10.0

* Approved mining plans
\+ Mining permits being reviewed as of April 1982

Source: Montana Department of State Lands, 1982, and Wyoming Department of Environmental Quality, 1982.

Senator MELCHER. We'll hear from some of the coal companies now. Chris Farrand of Peabody Coal Co. Mr. Farrand?

STATEMENT OF CHRIS FARRAND, VICE PRESIDENT, PEABODY COAL CO., WASHINGTON, D.C.

Mr. FARRAND. Thank you, Senator.

My name is Chris Farrand, and I'm vice president of something called Peabody Coal Co. Peabody operates one mine in the Powder River basin. In Montana, we have two other mine plans pending. We hope to be under construction in one of them by early summer and in another one by early next summer. We have other Federal holdings in the region, including preference right lease applications in Wyoming at South Gillette, Belle Fourche, Bell Center, and at a place called North Antelope. With the exception of the South Gillette property, the others are not at this time sufficient to justify a mining operation. In addition, as you're probably familiar, we have signed an agreement under Public Law 96–401 which would provide us with the bypass leases in Montana in the Greenleaf Miller area northwest of Ashland.

Mr. Chairman, I am kind of at a luxury here because Peabody Coal Co. has no direct interest in the upcoming 1982 Powder River sale, which gives me the opportunity, I guess, to look at the question from a more theoretical viewpoint.

We believe, in spite of our particular lack of interest in this sale, that the sale should proceed, and there are a number of reasons for it. The first reason is that there has not been a major coal lease sale other than a handful of maintenance sales in this region for the last 10 years. That means that there is probably a little bit of pent-up demand from companies that did not, I guess I can say, have the foresight to get in prior to the imposition of the moratorium in 1971.

I would also like to make a point that for those who may have a concern about the need to add leases because of present market conditions, there are two responses. One is that a lot of us have misjudged the market out here fairly substantially, but I'm not certain that that really is the issue. If the lease sale is to proceed and the leases are, in fact, conveyed, and the market to sell that coal never materialized, there's really no harm done. That land remains as is, the cattle continue to graze, the wildlife is still there. A risktaker is out a bonus bid and probably a substantial amount of development money, but there is no cost to the public, and there is reallly no cost in terms of disassociated land uses. So I am not certain that it is a bad thing except for those of us who might want to get into that market with the prospect of some development.

I'd also like to address the theory of leasing for demand. Under the current program, the department sets a goal, a goal for lease sales that tries to anticipate a particular level of demand. We think that that's probably faulty as a theory since it does not account for an additional amount of coal or an additional amount of reserves that need to be conveyed to the private sector in order to have competition in the sale of coal. Again, this is a rather theoretical view of things, but I think the basic tenet of the current program is faulty and that there's nothing wrong with conveying those extra leases. All it does is increase competition, and it means that the ultimate price of that coal to the customer is going to be less than it would be otherwise.

There have been a number of market constraints, and I think I would be remiss if I didn't address some of them for this particular area, and then I'd like to go into some of the production estimates and compare them with what I believe the current capacity, the anticipated capacity, the anticipated production plans are for the region.

First of all, for the coal market in general, we've experienced a relatively slack period simply because the growth rate in electricity consumption is not there. During the 1960's and 1970's we were experiencing growth rates that had a base of about 3 percent increase per year nationwide. In some areas they were as high as 6 percent. The current growth rate, or the growth rate for the last 2 years, has hovered around 1 percent per year or less. Now this has created a number of problems. It has, first of all, slowed down the rate at which utilities are building new plants and, therefore, creating new markets for long term, large scale supply agreements such as are the norm in this particular part of the country. It's also created some financial problems for the utilities, those financial problems being compounded by high interest rates and disruption in the bond market. So the combination of slow growth and financing problems have forced the utilities to let all of their plans for new construction slip considerably, and that, again, has seriously affected the market, particularly in this part of the country.

Compounding that market situation are a number of sort of regulatory related problems. One has to do with transportation and the fact that essentially the railroads are far less constrained now in what they can and do charge for long distance coal haulage, and unfortunately that has sent some signals to the market that have affected this particular region or the coal business in this particular region. There has been a lot of mixed signals produced with respect to the use of natural gas. The primary market for Powder River basin coal, speculative market, has been to displace the use of natural gas in the southwest part of the country where the majority of electricity is derived from burning natural gas. Congress set a limit on the use of natural gas and also indicated that it would prohibit the use of natural gas under major boilers after 1990, and that generated a lot of activity in this part of the country, and the utilities were here with construction schedules looking for long term supply contracts to get that gas out from under boilers, to displace that gas.

Then as you may recall, last year under the budget reconciliation process, Congress reversed itself on that question and said the utilities could continue to use gas, and that pricked the balloon, a little bit, of the business in this part of the country.

So those things have affected the market, but I have to say that they're relatively, I think, relatively temporary. The price of coal, even coal delivered in the Southwest, still is less than the price of natural gas and far less than the price of oil. At least on a nationwide average, the ratio is something like 3½ to 1, oil to coal, and about 3 to 2, oil to natural gas—excuse me; coal to natural gas. I reversed that. I'm sorry. Two to 3. The point being that there is still an incentive to go to coal if they can get the financial problem straightened out, if some of the undercurrents about the Clean Air Act are dealt with, and, finally, if the prospects for transportation, either by alternative modes such as the slurry pipeline or a different regime is established for

setting rail rates in this part of the country. If those things happen, then the market will, in fact, improve.

And I'd like to look at the market for a little bit, based on, somewhat on, Peabody's projections, somewhat on those of a consulting firm in Washington called ICF, Inc., which I'm sure you've heard about, and those of the Department of Energy. The Department of Energy, as evidenced in the Office of Technology Assessment study on existing leases, indicated that in 1990 demand for the Powder River basin would be in the neighborhood of 275 million tons, not 375. I would like to correct the impression left earlier on that question. The range of estimates was somewhere between 206 and 412 million tons by 1990, and the study also indicated that of that amount of tonnage, 186 is already contracted for. So if you take the mean, 275, 186 is already contracted for, there are mines with production plans, that means existing mines plus those associated with leases with favorable production prospects, favorable development prospects, those plans would total something like 280 million tons, or approximately the prospective demand according to DOE. Now they have a higher design capacity than that. The design capacity of those mines, both existing and the ones that are looked upon as favorable for development, would have design capacity exceeding 300 million tons; something like $340 million tons, according to DOE. So what we're talking about is the probable demand absorbing all of the existing production or planned production of existing mines, plus the planned production of those mines most associated with leases that are most favorable for development according to the OTA study. Now if demand rises higher than that, and again the high end of that estimate exceeds 400 million tons, which would substantially exceed the total design capacity of all the mines now in place plus all those that are favorable for development, then we've got a shortfall. We've got a substantial shortfall.

Now when ICF, in a study issued last May, I believe May of 1981 for DOE and the Department of Interior, did a study to look at the effects of underleasing and overleasing, the conclusion is that public costs, or the costs of overleasing, are essentially nill, except, of course, to the developer who laid out his bonus bill and can't find the market to sell his coal, and he sort of has to eat those costs. The public cost is essentially nill. However, the public cost of underleasing is substantial. Now looked at on a nationwide base, it doesn't seem very high. The cost associated with that would have a—well, the price effect of underleasing would be something in the neighborhood of 6 or 6.7 percent on the average price of coal; the price in this particular region. I'm sorry; I misquoted myself. The price of underleasing would be about a 4.4 percent increment on the cost of an average ton of—average cost of a ton of coal. The cost in this particular region, the mine-mouth price affected by an underleasing scenario, according to the ICF study, would be in the area of 44 percent, a very substantial amount. So I would reiterate that on the one hand you have no cost if you overlease. OK. And bear in mind the environmental costs are essentially nill because there's no disturbance in the land, and while I understand that the ranching interests are concerned about the prospect and the uncertainty associated with conveyance of a lease, it's been our experience, and in an almost uniform sense where we own a lease, that the

ranching continues. In fact, under the way we operate, the ranching not only continues while we hold the lease, it continues while we mine in the area not being mined at any given moment, and when we're through mining, we convey it back to the rancher. So there is the minimum disruption from an agriculture–economic standpoint. There is no disruption whatsoever if the mine never gets developed but the lease is conveyed, and, second, there is a very high, on the reverse side, there is a very high cost associated if you underlease.

So, our primary point, therefore, is that even though I don't have any particular interest in this lease sale, we're not going to bid on any of the particular tracts being suggested for lease, it does not bother me that they're being offered. There may be a lot of companies who aren't in the business yet who want to go in, want to be a risk-taker like we are, and I welcome them to the market. We'll all go out and compete on the basis of the coal we have and the coal that they eventually get, and we'll see what happens. If, as some people fear, there is no need for leasing because the market is soft, then they have very little to fear because the coal will never get sold. The leases may convey because of the pent-up demand, but the disturbance will not occur, and the market will essentially be no different that it is now.

I'd be happy to try an answer any questions you may have.

Senator MELCHER. Chris, what would you anticipate the bonus bid would be? What would be the range of a bonus bid?

Mr. FARRAND. Well, the only experience we have to rely upon to answer that question has been in the Colorado and southern Wyoming sales, which are the only two major coal lease sales that have occurred since the new Federal coal management system was put in place. Those bonus bids surprised everyone. That's in part because there is pent-up demand, as I indicated. It's part because the bidding procedures are changed a little bit so that you can offer a written bid, and then there's an opportunity for an oral bid, and in those circumstances people bid each other up and spend a great deal more money, I think, than anybody anticipated. In this part of the country, it's hard to say. Based on the present market, if people are looking at the present market and not trying to anticipate a market 8 or 10 years down the road, then I'd have to say they'll probably be pretty close to the minimum bid, again depending on particular tracts. And where there might be competition, either to round out an existing mine or to begin a new property, but the Government is still getting its fair market value because they have to, under the law, and there is, in the meantime, no disturbance of the land if it doesn't convey.

Senator MELCHER. Then you don't think your bonus bid is likely. Wouldn't a smaller amount of coal offered at one time be more likely to elicit a bonus bid?

Mr. FARRAND. Well, Senator, that's hard to say. Most companies, when they engage in a bidding strategy, look for particular reserves in a particular region, and you're going to do your darnedest to get your reserves offered and only look at other alternatives if you can't do that, and, obviously, if it's not in the position or in the location that you think is strategic for your purposes, then you're not going to bid that much for it somewhere else. So, while marginally yes, it may increase the bonus bid competition in another area, the ratio is not directly pro-

portional to the number of companies involved because they may have other strategic plans.

Senator MELCHER. If the ICF estimate in May 1981 incorporated the 1-percent-per-year increase in demand in electricity, where is all this extra coal production projected—275 million tons by 1990—going to go?

Mr. FARRAND. Well, as I indicated, there is already 186 million of that 275 that's already been contracted for. That's sold. So, we're looking for the new market.

Senator MELCHER. But that's coal already under lease?

Mr. FARRAND. That is coal under lease, but we're talking now about production needs and whether we meet production needs.

Senator MELCHER. I assume the 186 million tons that's under contract, means under contract by 1990?

Mr. FARRAND. That is under present contract to be produced in the year 1990.

Senator MELCHER. To be produced?

Mr. FARRAND. Yes.

Senator MELCHER. All right. Now that was a contract based on estimated growth demand for electricity of greater than 1 percent, was it not?

Mr. FARRAND. Well, you don't get a coal supply agreement from the utility unless they've got a plant under construction or at least licensed to go under construction. They're not going to buy—they're not going to sign a contract for delivery of coal before they're certain they're going to use that plan. If they have the financing, Senator, they're going to go ahead and build it because it's cheaper to operate that coal plant than it is an oil or gas plant, which is the alternative, so they might not build them as fast as they anticipated or as early.

What I was essentially talking about in the market growth scenario is what happens to the new business? What happens to the tonnage, the contracts that exceed that 196-million-ton level?

Senator MELCHER. What's the usual length of a contract? Twenty years?

Mr. FARRAND. In the West, sometimes they're longer than that. We have one 30-year supply agreement.

Senator MELCHER. All right. Take any of your contracts. Has the utility company always accepted and performed according to the contracts, or have you undershipped, in other words, less than what was called for in the contract?

Mr. FARRAND. The only case where we have undershipped in the West is our Big Sky mine in Montana, and in that case, we are still shipping, but we're marginally under what we projected to be at this point simply because the powerplant is located in the iron ore region of Minnesota and the steel business has gone flat, but we're talking about a relatively small amount of undertonnage, Senator.

Senator MELCHER. Isn't it true that the contract allows for undershipment in almost all instances?

Mr. FARRAND. Depends upon the contract. There are some take-or-pay contracts, and we have some of that nature, which means that they either take the coal or pay us for it anyway.

Senator MELCHER. You have some of each?

Mr. FARRAND. Yes.

Senator MELCHER. Some that allow for undershipment without canceling the contract, without penalty?

Mr. FARRAND. Some for shipment within a range; some they take the coal or pay us for it anyway, in which case they take the coal and they'll use that plant versus another plant, and they'll handle their contractual problems by the dispatch method.

Senator MELCHER. In January 1979, was your Big Sky mine operating at full capacity?

Mr. FARRAND. At the contract level, it was.

Senator MELCHER. That's what I mean.

Mr. FARRAND. Yes. Right now it's a little under what we expected to be at this point. We had expected to be at about 4.2, and I think it's at 3.8 million tons.

Senator MELCHER. Down about 4 percent, then?

Mr. FARRAND. Or under 1,000 tons.

Senator MELCHER. Down about 10 percent?

Mr. FARRAND. Yes.

Senator MELCHER. Some of your contracts permit that?

Mr. FARRAND. Some do.

Senator MELCHER. What happens to somebody that bids on—most of your leases are of old standing and are not subject to the diligence provision; is that correct?

Mr. FARRAND. Well, our leases were issued prior to the Federal Coal Leasing Amendments Act of 1976. They are subject to diligence, and under the current rules we must have them under development by 1986.

Senator MELCHER. Not under the same requirements, though?

Mr. FARRAND. Well, it depends upon the recoverable reserves.

Senator MELCHER. Does the diligence clause apply to existing contracts?

Mr. FARRAND. No.

Senator MELCHER. But it applies to existing leases?

Mr. FARRAND. Yes; it does.

Senator MELCHER. All right.

Mr. FARRAND. Yes; it does.

Senator MELCHER. They give you 10 years from that point?

Mr. FARRAND. Ten years from the passage of the act to bring them into production, and the current requirement is that we must have produced one-fortieth of the recoverable reserves of that lease by June 1, 1986.

Senator MELCHER. The requirement now on a new lease, on the diligence portion of it, would require what?

Mr. FARRAND. We must have produced 1 percent of the recoverable reserves of the lease within 10 years of the issuance of that lease.

Senator MELCHER. When must you file a mining plan?

Mr. FARRAND. We have to file a recovery plan by—within 3 years of lease issuance under the law.

Senator MELCHER. Would that term, "recovery plan," be the same as the mining plan?

Mr. FARRAND. No; there is some misunderstanding about that. The Federal Coal Leasing Amendments Act predated the passage of the Surface Mining Control Act, and that is a recovery plan which is a device used by the Geological Survey to determine the rate of recovery,

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when the reserve will be exhausted, and the general plan of mining. It is not a mine plan sufficient for issuance of a permit under SMCRA.

Senator MELCHER. Would the recovery plan require that equipment be available for the opening of the mine?

Mr. FARRAND. No; in fact, you can't disturb any of the land until you get a permit under SMCRA, and, Senator, you play hell getting a permit under SMCRA within 3 years of lease issuance.

Senator MELCHER. What are the basic requirements for maintaining the lease with regard to diligence?

Mr. FARRAND. Well, there's no particular—there are two essential diligence requirements. One is to produce that recovery plan in which you have to invest some money and personnel to prepare, and the next requirement is that you actually produce the 1 percent at the end of the 10th year. There is no interim requirement.

Senator MELCHER. What would be the effect if, having secured a lease, you reach the third year and have no recovery plan? What would then be the options available to somebody who has a lease?

Mr. FARRAND. Well, there's a bit of a legal question involved there, Senator. In theory, the Secretary would have the right to cancel the lease if he didn't fulfill the obligations under the terms of the lease, those obligations being dictated by the statutory requirements. There is some question, and I understand there's a debate among attorneys within and without the Department, whether the right of the Secretary to cancel a lease applies to that 3-year mine plan requirement or whether it applies to the diligence requirement at the end of the 10th year, and I'm not qualified to answer that question, but arguably, at least, the Secretary would have the right either to cancel or go to court to try to secure cancellation. I'm not certain that's a significant question, Senator, because anyone who invests in the bonus bid on the lease, on a sizable lease in this part of the country, is probably going to sink another amount of capital to prepare a plan. He needs that for his own business calculations, anyway, and he will probably go that step and file it with the Department, which allows him to keep that lease for several more years to see whether the market develops. He probably would go further and invest the money in preparing a mine plan under SMCRA and at least submit it to the State and Federal regulatory bureaus just to hold, make certain that he's got that lease and he can be ready at the time that he gets a contract. Bear in mind it only takes one contract to satisfy one lessee, and he may think that he can do a better job in marketing that coal than his neighbor.

Senator MELCHER. Are we not considering this proposed coal lease sale when you've stated that there probably will not be any bonus bidding of any consequence?

Mr. FARRAND. Well, there is a minimum bonus bid, Senator.

Senator MELCHER. All right.

Mr. FARRAND. There is a minimum bonus bid which everybody has to offer, and very frankly——

Senator MELCHER. So, when you say "bonus bid," you're talking about minimum bonus bid?

Mr. FARRAND. Well, I'm saying the minimum plus—if there is at least some competitive interest in that lease, there is more than one bidder, then there will be oral bidding, so it will be minimum bid plus something, and my comment——

Senator MELCHER. What would the minimum bonus bid be?

Mr. FARRAND. Well, that depends on the lease sale terms. The minimum bonus bid in the sales in Colorado and southern Wyoming was $25 an acre. I think the final winning bid on one of those, at least one of those leases, exceeded $1,700 an acre.

Senator MELCHER. Let's consider what the minimum bonus bid is likely to be in this sale. Is $25 the likely minimum bonus?

Mr. FARRAND. Well, only in a case, Senator, where you might have only one company interested in a particular tract. I don't see that happening. In our own strategy, we would never anticipate bidding the minimum. That just would not be prudent.

Senator MELCHER. Well, let's use $50, then. That's a fair figure, ball park figure, and the lease is for 2,000 acres. That would be a fairly substantial lease, would it not?

Mr. FARRAND. Yes.

Senator MELCHER. What opportunities does that give for speculation?

Mr. FARRAND. Well, the ball game is much more stacked against the speculator than it used to be, Senator, as a result of the Coal Leasing Amendments Act. You have little time between the time you get the lease and the time you've got to be in production to keep that lease. I guess I'm having difficulty understanding what the definition of "speculator" is. If you mean a speculator who is not interested in developing a lease but merely acquiring the lease to convey to somebody else who might be a developer, that's what I would term speculation.

Senator MELCHER. Yes; I'm using it in the same way.

Mr. FARRAND. That's not what most of the bidders are in this business anymore because the speculator is required to expend money beyond the bonus bid almost immediately to get his initial 3-year plan done, to get his drill data done, and there's not as much room for the nondevelopment oriented speculator anymore, and the people who are bidding on those leases that we have seen so far on the two previous sales have been speculators of a different sort. They're speculating on the coal market, and they're miners and developers, and they want to put that mine in, and they're speculating on their ability to market that coal relative to the next guy.

Senator MELCHER. All right. What is coal currently selling for under contract? What's the most favorable contract you have right now?

Mr. FARRAND. In this part of the country, Senator?

Senator MELCHER. In Big Sky.

Mr. FARRAND. I'm not certain exactly what our contract price at Big Sky is at this moment. It's probably—I'll give you a range, I think——

Senator MELCHER. Yes; that will be satisfactory.

Mr. FARRAND [continuing]. Which will be safe; a range between $7 and $9 a ton for that coal.

Senator MELCHER. The statement you made about Powder River basin coal being affected by the Southwest utilities' return to natural gas, which is permitted, now would you think that much of the Powder River coal would be going, much more would be going to the Southwest?

Mr. FARRAND. Well, that was the—I won't say it wasn't the initial market. The initial market was the Midwest. It was Illinois, Wisconsin, Michigan, due to the passage of the Compliance Coal Option in 1970 and the Clean Air Act. The second market that developed was the displaced gas in the Southwest as utilities saw the prospect of natural gas deregulation. Deregulation in its purest form has not yet occurred, and in 1977, Congress passed the Fuel Use Act which said not only could they not build a new plant using gas, they could not increase their present gas consumption over what it was in 1977, and finally that after 1990 they couldn't use gas at all. So with that incentive they started to develop coal plants, and they sought supply contracts from this particular part of the region to satisfy that. Now they don't have to worry about the 1990 prohibition anymore and they can continue to run those gas plants so long as they think it's relatively economic compared to the cost of building a new coal-fired plant to displace it, and that's been affected by the financial market, the bond market, and it would be affected further if Congress finally totally deregulates natural gas.

Senator MELCHER. Is there a developing export market for coal from the Powder River basin?

Mr. FARRAND. There is a very substantial export market nationwide.

Senator MELCHER. However, from the Powder River basin, specifically, is there a developing export market?

Mr. FARRAND. The Powder River basin, per se, will probably be a marginal source of coal for the Pacific Rim, and the reason is that you ship a lot of tonnage to get, a lot more tonnage, to get the same number of British thermal units out of this region because it's relative low of British thermal units out of this region because of its relative low Btu.

Senator MELCHER. Does it run at around 9,000 to 10,000?

Mr. FARRAND. Less than that.

Senator MELCHER. Less than that?

Mr. FARRAND. Generally speaking, 8,500 to 9,000 in the Powder River basin. The coal that is going to the Pacific Rim countries is coming from Colorado and Utah, which is higher Btu. It's also more costly to mine, but the shipping costs per unit of heat is less. The Powder River basin will or could become a source of export coal, depending upon the mode of transportation. If we have a slurry system or some other exotic mode of transport, then Powder River basin could become a marginal supplier to the Pacific Rim.

Senator MELCHER. To get back to this point, though, there's 186 million tons production per year already contracted for on the Powder River basin under existing leases. That's for 1990. So if the demand growth is there over and above that, we're still talking about a relatively small amount of coal to add to that 186. We'd be adding 114 million tons to reach 300, and presumably that these coal leases that we're talking about that would be offered for sale would make up a portion of that 114 million tons because we're also talking about private coal and Indian coal and State coal. So isn't it an awful lot of—isn't 2.1 or 2.2 billion, a 2-billion-ton sale a pretty large figure in order to make up a portion of that 114 million tons that would be possibly demanded or satisfy the possible demand by 1990?

Mr. FARRAND. Well, it depends upon the standpoint you look at. If you look at it from the standpoint of a potential bidder on a new lease, then, yes, it looks like a lot of coal. But if you look at it from the standpoint of the public, then it doesn't really make any difference, Senator, and it goes back to the point I made earlier that nothing is going to get developed if the market doesn't develop, so there's really no harm. It's a no harm option.

Senator MELCHER. That point is true, but first, I hardly see how the public is served by a lower level of bonus bidding and, second, by companies who do go in and pay the bonus bid and the other costs involved in developing their plans, and then losing out.

Mr. FARRAND. Well, I don't think the public is harmed——

Senator MELCHER. Do you mean by losing out?

Mr. FARRAND. By the private expenditure of capital on speculative development of a lease.

Senator MELCHER. You don't?

Mr. FARRAND. I don't see how the public is harmed there. I would make the point on the bonus bid, there may be a marginal reduction in the amount of money that the Government receives in bonus bid, but you have to bear in mind that the majority of the return to the public on the sale of coal leases comes in the form of royalty, not bonus bids.

Senator MELCHER. I understand that. Let's use Consol as an example. If they bid, get the lease, spend money, and then you really don't develop anything, isn't the public harmed?

Mr. FARRAND. I don't see how. In fact, what I would—I would turn the question around, Senator, and say that if——

Senator MELCHER. There's wasted capital.

Mr. FARRAND. Well, it's wasted capital, but it's venture capital, and that's what we're all in business for.

Senator MELCHER. Well, venture capital seems to be one of the reasons we have high interest rates. It seems to take up credit. I can hardly believe that speculation of a market is in the public's best interest when the market doesn't develop, but you've invested quite a bit of the capital of stockholders that is subsequently wasted.

Mr. FARRAND. Yes.

Senator MELCHER. We understand—that it's necessary to also protect public interest to have venture capital out there ahead and taking that risk. I'm not minimizing that, but I'm just trying to rationalize how much we might want to get out in front.

Mr. FARRAND. I appreciate your concern for our profit, but I'd like to turn that question around and say that there may be much more public harm if you made the mistake and did not have enough reserves under lease to satisfy demand at its highest level, OK, and that's what you ought to really anticipate doing. Number one, that assures that there is adequate competition in the sales price of the coal. It assures that if the market does develop, and we went through it twice in the last decade where we've had big spurts. It happened in 1973 and it happened again in 1979 with the price of oil. If you have not anticipated that, if you have not bought the insurance of putting adequate numbers of leases in the hands of developers so that the response time of satisfying the market at its highest level is short enough to meet that demand, then you may have seriously harmed the public.

I am not capable, and our company, which has been in the business for a lot of years, is not capable of accurately measuring future demand. I don't think ICF is. I don't think DOE is, and I guess what you're suggesting, Senator, is that we base our leasing decisions now on what that picture might be down the road, and if we miss, Senator, it's going to have a very high cost to the public. If we make an error, it's going to have a very high cost, and, to be redundant, if we make an error on the side of overleasing, there is almost no cost.

I would concede the point that there might be a marginal cost on the bonus bid side, but that is a very small cost compared to the cost of underleasing. We're not buying that insurance.

Senator MELCHER. Yes; you make that point, and I recognize it as a valid point.

However, let's continue to consider the 186 million tons already under contract out of the Powder River basin. Can I assume that all of the 186 million tons that's under contract, is not subject to any of the new leases that are going to be offered? Can I make that assumption? Perhaps I'm wrong.

Mr. FARRAND. I don't think I'm qualified to answer that. There may be some of those leases which may be adjunct.

Senator MELCHER. Yes.

Mr. FARRAND. No one is going to sell a contract for a lease they don't own. They just don't do that in the business. There may be cases where one of the leases offered may be adjacent to an existing operation or an existing property which is under contract, and it has to do with expanding your capability or allowing you to produce at a faster rate than you would otherwise, but chances are, you're correct.

Senator MELCHER. All right.

Mr. FARRAND. Most of them are existing leases.

Senator MELCHER. Then it brings up another point, and I think I understand you properly, but I want to be sure. Whatever you plan on Greenleaf is already under lease?

Mr. FARRAND. No; that is not under lease, Senator.

Senator MELCHER. It is not under lease?

Mr. FARRAND. No. We signed the agreement with the Secretary and the tribe about 14 months ago, and under the agreement the leases will probably issue in 1984 to us. They are noncompetitive, as you know——

Senator MELCHER. Yes.

Mr. FARRAND [continuing]. Under the statute that you authored.

Senator MELCHER. Yes. They're cinch leases.

Mr. FARRAND. Well, we pay fair market value for them.

Senator MELCHER. Yes, I know.

Mr. FARRAND. OK.

Senator MELCHER. But they're not to be bid?

Mr. FARRAND. No.

Senator MELCHER. They're to be allotted to you as a matter of fact?

Mr. FARRAND. Under the agreement, the department still has to go through the land use planning process, and has to develop their resource management plan and do all the other unsuitability tests before they can issue that lease to us, so we don't expect that lease until the second tier Powder River sale tentatively scheduled for 1984.

Senator MELCHER. None of that, however, is projected in this 186 million tons——

Mr. FARRAND. No.

Senator MELCHER [continuing]. That's already contracted for?

Mr. FARRAND. No.

Senator MELCHER. So that's in addition?

Mr. FARRAND. I can tell you that, because there is some degree of certainly about our ability to acquire that, because it's noncompetitive that we are marketing that coal every day, literally every day, and have been in negotiations over the sale, prospective sale of that coal.

Senator MELCHER. "Marketing" meaning offered?

Mr. FARRAND. Offered to a customer.

Senator MELCHER. Offered for sale, but no contract yet?

Mr. FARRAND. No. No contracts yet.

Senator MELCHER. In summary, then, you do not expect Powder River coal to play much of an impact in export over at least the next 10 years; is that right?

Mr. FARRAND. That is probably correct.

Senator MELCHER. Yes.

Mr. FARRAND. Some of it. Not much.

Senator MELCHER. And you would anticipate the demand increase for electricity to be in the range of about 1 percent extra per year?

Mr. FARRAND. No. What I said is that's been the record to date. Now that—I should say that the rate of increase in the use of coal for electricity far exceeds that, because utilities, to the extent they can, are backing out other fuels and displacing them with coal.

Senator MELCHER. I see.

Mr. FARRAND. But that has affected the market overall, not so much because of the rate of coal burn, but it's affected the rate at which utilities are willing to build new plants. You build new plants to meet load growth and to back out of antiquated existing facilities, for both purposes, and if they don't have the load growth increase—if they don't have the load growth—then they don't build those new plants as fast as they otherwise would, and, therefore, new mines—new mines in the Powder River basin—don't sell coal as fast as they otherwise would.

Senator MELCHER. You said this 186 million tons is under contract and you would anticipate that those contracts will be executed at about that rate?

Mr. FARRAND. Yes. I should say that the production in 1981 in Wyoming, I think, was 91 million tons total, and in Montana it was approximately 30 million tons. So of that 186, we're already producing 120.

Senator MELCHER. Yes.

Mr. FARRAND. And the rest is involved in contracts either where you got a new start, which is our case, or you got gradual increases in existing contracts to meet the third or the fourth unit of a powerplant as it comes on line.

Senator MELCHER. And beyond that, you would suggest that the demand for 1990 from Powder River basin will be somewhere between 275 million and 300 million tons?

Mr. FARRAND. Those are the combination of estimates of a number of different sources. That's within a range of base case estimates, all right? The total range of estimates is much broader than that. DOE's range is from 206 to 412, and ICF's is from 163, which is wrong be-

cause it's below the contract level, to 382. Now all I'm saying is that if you don't make certain that there is enough reserve in the hands of developers to meet the high end of that estimate, then you run the risk of a shortfall with commensurate costs, or an undersupply, more properly put.

Senator MELCHER. I think we've almost reached that. Well, we may not have reached the high side of it; I think we've almost reached the median side on what is already there and what is already projected by the 1984 noncompetitive leases.

Mr. FARRAND. Well, if you look at the pending preference right lease applications, you're talking about?

Senator MELCHER. No; I don't believe I am.

Mr. FARRAND. Well, I thought you were referring to the comment that the noncompetitive——

Senator MELCHER. No. The 186 million tons is under contract right now.

Mr. FARRAND. Right.

Senator MELCHER. There will be some preference or some noncompetitive leases in 1984 involving the Northern Cheyenne.

Mr. FARRAND. Yes; but that's a relatively small amount of coal, Senator.

Senator MELCHER. All right.

Mr. FARRAND. Ours is like 130 million tons. Not a sizable amount.

Senator MELCHER. And there's a contract existing—is Shell going to testify here today?

Mr. FARRAND. I don't believe they're on the list.

Senator MELCHER. They're not on the list.

Mr. FARRAND. They were not a party to the Cheyenne settlement.

Senator MELCHER. No; but Shell has a contract with the Crow.

Mr. FARRAND. Yes.

Senator MELCHER. Intermingled with the existing contracts are Burlington Northern coal.

Mr. FARRAND. Existing contract, Senator, is for total production of the region. I was not dealing strictly with Federal coal.

Senator MELCHER. Yes. That includes the Burlington Northern coal. All right. So we're perhaps close to 200 million tons per year production already under existing leases, or that will be available on the noncompetitive leases in 1984 brought by the Northern Cheyenne cancellations plus the Shell contract with Crow. There's another one.

Mr. FARRAND. Can I interject something that may put this into focus?

Senator MELCHER. There is one other contract we'll have to discuss later, and that's the Westmoreland contract, and I don't know how that's counted in. Perhaps it's part of the 186 million you've talked about.

Mr. FARRAND. I assume it is.

Senator MELCHER. Yes.

Mr. FARRAND. I think someone is here from Westmoreland.

Senator MELCHER. Yes; there is.

Mr. FARRAND. Senator, there is 186 million tons already contracted for, as I indicated. There's 120 million tons of production now. The estimate, the current estimate, much more current than the range of numbers I gave you for the Powder River basin for overall national

production in 1990, that's about 1.25 billion tons which compares to about 840 million tons we produced last year. So we have something like a 400-million-ton increment of demand to satisfy. OK. To get the Powder River basin from where it is now to where they're expected to be under the scenarios that I gave you, we need approximately 140 million tons of business, some of which has already been contracted for. OK. In fact, 66 of which has already been contracted for. Now that amount of business out of a total increment of demand of 400 million tons is not unreasonable to expect. You have very favorable conditions out here for mining, and it's a question of whether they will offset the unfavorable conditions like distance and low BTU, and it's anyone's guess as to whether they will. Put in the context of what's going to happen overall to national demand, I think we'd be making an error if we didn't buy the insurance to make that supply available.

Senator MELCHER. All right. Thank you very much, Chris.

Mr. FARRAND. Thank you, Senator.

Senator MELCHER. Art Neill of Western Energy Co.

Has Chris left yet?

Mr. FARRAND. No.

Senator MELCHER. I'd like to ask one further question. Have you had any difficulty with the operations of your mines in getting additional leases when necessary?

Mr. FARRAND. Under bypass circumstances?

Senator MELCHER. Yes.

Mr. FARRAND. No. We've had one need for that in Colorado, which was satisfied 3 years ago, 2 years ago, with a 160-acre bypass lease, and that was a case where it behooved the Government to give it to us, but we would have to leave it in the ground.

Senator MELCHER. Has Peabody been asked to comment on any proposed change in the regulations?

Mr. FARRAND. Yes, we have. Well, everyone has been asked to comment, and we have, in fact, commented on some proposed changes in the regulation.

Senator MELCHER. And what are those proposals?

Mr. FARRAND. The Department has proposed changing the diligence requirements for leases issued prior to 1976, in which you would be given not 10 years from the passage of the Coal Leasing Amendments Act but 10 years from the next first readjustment period that occurred after passage. That means that instead of having all the undeveloped existing leases expire or vanish from the supply chain in 1986, that they would vanish over a period of time beginning in 1986 and probably extending another 8 or 10 years thereafter.

Senator MELCHER. All right. So in your mining operations in the West, there has been no difficulty in your leases running out and needing to get the emergency additional lease, or——

Mr. FARRAND. The maintenance leases?

Senator MELCHER. Yes, the maintenance leases.

Mr. FARRAND. No. We haven't had—we've had other problems, and that is that under the existing diligence rules, we had to assume that we were not going to be able to get all those leases under production, and we sold some properties as a result.

Senator MELCHER. Yes. All right. Thank you very much.

Mr. Neill?

STATEMENT OF ART NEILL, VICE PRESIDENT, MONTANA/WYOMING OPERATIONS, WESTERN ENERGY CO., BILLINGS, MONT.

Mr. NEILL. Senator, thank you for inviting us to testify at this hearing.

I am Art Neill, with Western Energy Co. We operate the mining properties at Colstrip, Mont. We've been producing there since 1968, and last year our production was a little over 10 million tons, and we're presently employing 343 people at Colstrip.

The bulk of our production goes to the utility market in the upper Midwest and here in Montana, but additionally we serve a great many small industrial and commercial customers in the upper Midwest. Just to mention a few, because they're a very diverse group of businesses, a sugar company, John Deere Tractor Co., Rice Lake Creamery, and several municipalities.

We've had a great deal of trouble at Colstrip, Senator, in obtaining Federal coal leases when we need them, contrary to the experience that Peabody has had out here in the West. The leasing moratorium, when it fell on us in 1971, caught us without a consolidated lease position because of the checkerboard pattern at Colstrip between Burlington and Federal coal. Our philosophy is to produce coal from our leases, both Federal and fee, in a manner that achieves maximum recovery of the resource with a minimum of impact on the environment. Because of the unavailability of necessary Federal coal, we have continually had to employ planning and mining methods that are less than efficient. We have continually changed our plans as leases which we thought were going to become available didn't become available. An unfortunate result of the need to change our plans has been the layoff on a temporary basis twice within the last 3 years of some of our miners at Colstrip. We have developed our plans and permit schedules around the Federal lease program anticipating that the three tracts that we're after for maintenance will be available April 28, 1982, and I'd like to stress that the tracts we're after at this sale are maintenance tracts, and these tracts, as BLM mentioned earlier, have been identified as Colstrip A and B, Colstrip C, and Colstrip D, and I attached to the testimony that I submitted a map similar to the one that I have proposed up over here. I would like to point out that in our case, we control the surface overlying all of the lands that we have requested.

It is essential that affirmative action be taken now to assure that these unleased Federal tracts as shown on this exhibit are made available for development in conjunction with the leased coal that we're already mining in two of those three areas; well, really, in one of the three areas shown up there. The mining area that we call A is shut down at this time, but we have a permit application pending for that area.

In examining the tracts that we are requesting, it is important to realize that present regulations may require that buffer zones be imposed around lands that we do not have access to. Experience has shown us that at least with the geology we have at Colstrip that these zones can be as great as 100 feet wide. This means that some of the both Federal and fee coal would be left in the ground if we don't have a contiguous reserve position. Mining area D, which we have not entered yet, contains about 45 percent unleased Federal coal, and if we

were unsuccessful in obtaining the unleased Federal coal, we estimate that with it and the loss in the fee coal that we already have, we would probably lose 60 percent of the mineable reserve in that area.

Also I'd like to mention that coal from the adjacent mining area E, which isn't shown on this exhibit, but it's in this area [indicating] down to the south of mining area D. Coal from that area will be depleted in 1984, and it's supplying the two existing powerplants at Colstrip plus the Corette plant here at Billings, and because of the time required for mining permit, we have to submit that this year, 1982, in order to have a new permit and our new facilities constructed by the end of 1984. So we're anxious to see that the leasing scheduling as scheduled in order to meet that permitting requirement.

When we develop a mining plan, we try and put it together in a logical fashion, and that, to use the Federal phrase, becomes a logical mining unit. But as mining progresses, then this can flow into a logical reclamation unit, and when that is complete then you can put together what is called a logical agricultural unit. The checkerboard situation that we're still left with at Colstrip makes it impossible to develop the property in a logical pattern, and the worst part of it all, it drastically increases the costs to mine the resource.

Both administrative agencies and we, the operators, are mandated by law to maximize mineral recovery and minimize adverse environmental impacts. Denial of these three tracts will certainly result in less than maximum resource recovery and also provide the potential for increased economic and environmental impacts. The tracts that we have requested comprise 4,700 acres containing approximately 98 million tons of coal, and just to put that in a perspective at a selling price of $8 per ton, we're looking at $98 million in Federal royalties, $272 million in State production taxes, and about $65 million in reclamation and black lung trust fund contributions.

In considering whether additional coal should be leased over and above what we're requesting, which is strictly maintenance, I would like to discuss three or four issues which have already come up here.

First, as the gentleman from Peabody mentioned, diligence requirements are now a part of the Federal program. An operator must commence production within 10 years or see the lease turn back to the Federal Government. Second, with the State and Federal environmental status that we have, if mining began, it would have to be done in an environmentally acceptable manner or it would not be allowed. Mining is not permitted in areas where irreparable damage will be done to the environment. The regulations assure us of that. Third, most of our markets are long term. Companies would be very reluctant to enter into long term contract commitments without first securing the coal. With the complexity of the present leasing programs and the long time that it takes to obtain leases, it's essential that leasing come before marketing. Finally, the large investments required to bring a mine into production just about guarantee little or no surface disturbance without the assurance that there really is going to be a producing mine and that it really does have a market for its coal.

In conclusion, I would like to urge that the April 1982 coal lease sale as proposed be held as scheduled. In our case at Colstrip, it is essential. Without the tracts, we obviously are still going to continue to mine, but it sure makes better sense to include the unleased tracts,

assuring a logical maximum recovery of the resource with a minimum of damage to the environment.

Thank you.

Senator MELCHER. Art, I do have some questions. I'd like to take just about a 5-minute recess here.

[Recess.]

Senator MELCHER. The committee will resume session.

Art, the sales that are Colstrip A, B, C, and D, you mentioned E. That isn't part of the proposed sale, is it?

Mr. NEILL. No, Senator. That is covered by an existing Federal lease which we're now mining?

Senator MELCHER. All right. The entire area would be mined during what span of time?

Mr. NEILL. The latest long-term contract that we received, and the coal will come out of area C, is a 30-year contract which will commence in 1983. We have long-term contracts with Wisconsin Power and Light and Northern States Power. We've been producing for 6 years under those contracts, and they were 20-year contracts with 5-year extensions.

Senator MELCHER. In area C, section 12 is left blank except for, it looks like, about 40 acres down there.

Mr. NEILL. Yes, sir.

Senator MELCHER. What does that mean?

Mr. NEILL. No coal in that area.

Senator MELCHER. No coal?

Mr. NEILL. It's been eroded away.

Senator MELCHER. But the 40-acre tract in that southeast corner does have coal?

Mr. NEILL. Yes, there's coal.

Senator MELCHER. And it's Federal coal. What about areas A and B? When will they be mined?

Mr. NEILL. We're mining in B now, Senator, and the creek basically divides the area, so everything to the south of the creek is area B, and we have two mining operations going on there right now. We should have one north of the creek and one south of the creek, but we ran out of permitted coal in A, so until we receive that next permit, we have both of those operations consolidated down in area B.

Senator MELCHER. Does this represent the amount of mining you would be doing during the next 20 years?

Mr. NEILL. The areas we're portraying?

Senator MELCHER. Yes.

Mr. NEILL. Yes—during the next 20 years.

Senator MELCHER. For any longer period of time than that?

Mr. NEILL. Well, we would obviously like to have more business, and if we could secure long-term contracts, we would, in fact, extend our mining areas. Our parent company, Montana Power, has not yet put out a request for bids for a coal supply for resource 89, but obviously when they do, we will be in the bidding, and probably will bid coal out of Colstrip. So if new contracts come along, this does not show the extent of our mining.

Senator MELCHER. What does this show in terms of production per year?

Mr. NEILL. With the Colstrip 3 and 4 contracts, we'll be mining between 16 and 18 million tons annually. Our contracts are structured in a fashion similar to Peabody's in that they have a band within them, but if our customers took it, the maximum required and allowed under the contracts, we would be at 18 million, but I suspect it more likely to be 16 million.

Senator MELCHER. Over 16 million tons per year over the next 10 years; in other words about 160 million tons?

Mr. NEILL. [Nodding head affirmatively.]

Senator MELCHER. Or even doubling that for 20 years, you're talking about 320 million tons. Isn't there several times that amount of coal represented here?

Mr. NEILL. Yes. We have an estimated 600 million tons of recoverable coal at Colstrip.

Senator MELCHER. In these three areas or four areas, if you separated out A and B?

Mr. NEILL. And there's also a fifth area, Senator, that's out to the west that's not shown on this exhibit.

Senator MELCHER. In the Sarpy Creek area?

Mr. NEILL. No, it does not go over the Wolf Mountain.

Senator MELCHER. Does not go over that. OK.

How much is the estimated coal involved in total tonnage in these sales, Colstrip A, B, C, and D?

Mr. NEILL. Ninety-eight.

Senator MELCHER. Ninety-eight million?

Mr. NEILL. Ninety-eight million, yes.

Senator MELCHER. A little less than 5 percent of the total sale?

Mr. NEILL. Yes.

Senator MELCHER. Now you mentioned that twice during the past 3 years there have been temporary layoffs as a result of, I take it, trouble in timeliness in getting maintenance leases.

Mr. NEILL. Yes, which caused us a problem with our permitting. We finally were able, 2 years ago, to secure the emergency lease in mining area E, and when we did get that, then we put our mining plan application through the process, and we got that 1 year ago.

Senator MELCHER. Has it occurred that because you couldn't get a maintenance lease you had to leave a buffer zone and therefore did not recover the coal?

Mr. NEILL. Yes, sir.

Senator MELCHER. Where is that? Could you identify it?

Mr. NEILL. You bet. This tract was [indicating] up for short-term lease, and I've lost track of the dates, but I think it was 1977, and we bid on that, but that was the first one when they were trying coal, and I think the estimate was 20 or 30 million tons. I believe now we bid below that minimum and lost the right to secure that lease, so we stopped our mining activity along this boundary and along this boundary. Now we're asking for that lease in the 1982 lease sale because we think we can get most of the coal by coming in from the top. At one time, we thought we would lose a considerable amount of coal, and I think the estimate was 20 or 30 million tons. I believe now that we probably will lose 7 to 8 million tons, but that will be all that won't be economically feasible to mine, and the reason it won't

is because we couldn't secure this lease when we really needed it and couldn't average this deep coal with the shallow coal that we were already mining from the fee lease.

Senator MELCHER. Who does the fee lease belong to?

Mr. NEILL. Burlington Northern.

Senator MELCHER. Is most of this Burlington?

Mr. NEILL. Yes.

Senator MELCHER. Is most of this fee coal Burlington?

Mr. NEILL. Yes, it is.

Senator MELCHER. Have you been asked for comments on maintenance leases, any changes in the regulation?

Mr. NEILL. I believe we have, Senator, but I wouldn't have been involved in the comments, though. I can't answer.

Senator MELCHER. Is the Western Energy Co. asking for preference for these leases?

Mr. NEILL. Preference?

Senator MELCHER. Yes.

Mr. NEILL. I don't understand your use of that term, preference.

Senator MELCHER. Well, you surround them.

Mr. NEILL. We're asking that they be treated as maintenance tracts, but they'll be competitive.

Senator MELCHER. You're asking that all these tracts be treated as maintenance tracts but will still be competitive?

Mr. NEILL. Yes, sir. Others will be able to bid on them.

Senator MELCHER. Almost all of these tracts involve adjoined—either what you have in ongoing operations or have—well. I guess all of them do. Are these ongoing operations or in fee coal that you already have under lease?

Mr. NEILL. Yes, sir.

Senator MELCHER. Is it a certainty that you will be asked to bid on Project 89 coal?

Mr. NEILL. Yes; I'm certain they will ask us to bid on it. It's not certain that we'll——

Senator MELCHER. Have the low bid?

Mr. NEILL [continuing]. Have the low bid.

Senator MELCHER. Because it may be closer coal that might be——

Mr. NEILL. Yes, sir.

Senator MELCHER. What annually will be consumed by Colstrip 1, 2, 3, and 4?

Mr. NEILL. 7½ to 8 million tons.

Senator MELCHER. This would be about half of your production?

Mr. NEILL. Yes, sir.

Senator MELCHER. And you have contracts now?

Mr. NEILL. Yes.

Senator MELCHER. That would take up the other 8 to give you a projected 16 million tons for your production?

Mr. NEILL. Yes.

Senator MELCHER. You mentioned a range of customers, and several of them which are obviously industrial plants. John Deere is one of them.

Mr. NEILL. That coal is sold through Great Lakes Coal & Dock Co., and we do not have contracts directly with those customers. That amounts to about half a million tons to three-quarters of a million tons per year.

Senator MELCHER. Are they generating electricity with it in their plant, or do they use it for other industrial uses?

Mr. NEILL. Both.

Senator MELCHER. Both?

Mr. NEILL. Yes, sir.

Senator MELCHER. And it's about 9,000 Btu?

Mr. NEILL. Eighty-five to eighty-six hundred.

Senator MELCHER. Eighty-five to eighty-six hundred.

Thank you very much, Art.

Mr. NEILL. Thank you.

Senator MELCHER. Bill Gillin and Bob Tully, Northern Plains Resource Council.

STATEMENT OF BILL GILLIN, CHAIRMAN, NORTHERN PLAINS RESOURCE COUNCIL, BILLINGS, MONT.; ACCOMPANIED BY MARGIE McDONALD, STAFF MEMBER

Mr. GILLIN. I'd like to introduce Bob here and also Margie McDonald, who is a staff member. She's our resource researcher.

For the record, I will just read this statement. The statement of Bill Gillin, NPRC chairman, before the Senate Committee on Energy and Natural Resources hearing on the proposed 1982 Powder River coal lease sale and goals.

Senator Melcher, on behalf of the Northern Plains Resource Council, I would first like to commend you for holding this hearing. Many of NPRC's members reside and ranch in the Montana Powder River basin. We have conscientiously participated in the leasing process since Federal land use planning was initiated in the early 1970's. Throughout this process, our concerns for the agricultural values that are jeopardized by coal leasing and mining have been largely ignored. The Powder River coal lease sale merits intensive scrutiny by Congress for the following reasons.

One, the Powder River lease sale EIS is seriously deficient in meeting the requirements of the National Environmental Policy Act and the Federal coal management program rules under which it was prepared.

Two, the land use plans upon which the lease sale is based fall short of the standard necessary to fairly consider the multiple use resource trade-offs implicit in leasing coal.

Three, the leasing goal of 2.2 billion tons far surpasses any conceivable need for the coal. If this land were truly the "big empty," without a productive agricultural industry, valuable wildlife habitat and stable communities, then the target would perhaps be of no consequence. But you and I know differently. It's our home. The Federal coal management program clearly requires that agricultural values, social and economic impacts, wildlife values, and so on, must be weighed against the need for the coal. The unreasonably high target extracts a heavy price in the trade-off of important values and concerns.

Four, the proposed lease sale in the Powder River basin represents a de facto implementation of an entirely new coal leasing program, only now in the rulemaking phase. Implementing the proposed program is premature and out of order. The proposed new coal leasing program, combined with new land use planning rules and new diligent develop-

ment rules merits the thorough examination, with public participation, that could only be achieved by publication of a programmatic environmental impact statement under the National Environmental Policy Act.

Before expanding on these points, I would like to state emphatically for the record that NPRC does not and has not opposed the sale of approximately 342 million tons for maintenance tracts at existing and permitted mines in the Powder River basin.

I must observe that the proposed target of 2.2 billion tons, in fact, jeopardizes the legitimate sale of maintenance tracts that might be needed in the near future. As vulnerable as the EIS and the lease target are to substantive challenge, the Department of the Interior is playing a dangerous game with those coal mine operators who may need Federal tracts to maintain production.

Returning to my first point, the EIS does not meet the requirements of NEPA or the Federal coal management program rules. It fails to justify the need for the proposed lease sale. It fails to analyze alternative lease sale schedules as required by NEPA. It fails to analyze the impacts of leasing on a tract by tract basis. It compares the impacts of new Federal leasing to an invalid baseline of 369 million tons of coal produced in the Powder River basin by 1990, without any Federal leasing. The impacts of leasing Federal coal should properly be compared to a baseline that can be grounded in present-day reality. It fails to assess the offsite impacts of leasing and subsequent mining on the agricultural productivity of the region, including surface and ground water systems.

It significantly underestimates the social and economic impacts of leasing on the Montana communities of Ashland, Broadus, and Birney. It assumes the successful reclamation and return of leased tracts to productivity despite the fact that no such productivity has yet been demonstrated in the region. It compounds the deficiencies in the reclamation analysis by failing to identify very high percentages of either poor or unsuitable soils for reconstruction and revegetation in the Otter Creek area.

The lack of valid and credible information on the EIS, the distorted comparison of the effects of leasing to a tremendous increase in production without leasing, and the failure to justify the need for the lease sale or to list alternative lease sale schedules combine to form a useless decision document.

NPRC formally appealed to the Department of the Interior the adequacy of the land use plans upon which this lease sale is based. In rejecting our appeal, the Bureau of Land Management replied, and I quote:

> Tracts will be analyzed, ranked, and discussed in the Powder River Regional Environmental Impact Statement. The impact statement will consider the impacts on each specific tract, should mining occur, as well as cumulative impacts of leasing different arrays of tracts. Agricultural, social, economic, and environmental impacts will be assessed and displayed.

Senator Melcher, we are disappointed to find these issues whitewashed or absent in the EIS. Since 1972 we have sought the recognition of agricultural values in those land use plans. The EIS was the last stop in the process, and it fails miserably.

The EIS fails to justify the need for the proposed lease sale and target. The proposed sale of 2.2 billion tons in 1982 would increase the production capacity in the Powder River basin to more than four times current levels; from 104.5 million tons in 1980 to 449 million tons in 1990. This surpasses the Department of Energy's highest 1990 demand forecast by 37 million tons.

The Office of Technology Assessment task force found the DOE estimates to be unrealistic. They estimate a likely range of demand in 1990 to lie between 200 and 225 million tons. It is little wonder that the EIS neglected to analyze the need for the sale in the face of these facts.

Let me emphasize the point that there presently exists an overcapacity in the Powder River basin, according to OTA, of 75 million tons.

The Department of Energy's high production goals assume 1 million barrels per day of coal based synthetic fuels in 1990 and the strict enforcement of the 1990 deadline for industrial and utility boiler conversion to coal from natural gas, now repealed.

In the year since the OTA task force made its assessment of the potential market, the National Electric Reliability Council has lowered its forecasts of the 1990 steam electric coal market.

The evidence is overwhelming that the lease target is vastly overestimated. In the face of the facts, the target is literally unjustifiable.

I stated that the proposed lease sale represents a de facto implementation of the proposed new coal leasing program. The administration's proposed program represents a radical shift in Federal coal leasing policy to lease to meet industry's demand for reserves, rather than a projected national need or demand for coal production.

The philosophy behind this shift in policy rests on the assumption that availability of Federal coal in the West is a significant factor in the ultimate cost of the coal. It directly contradicts the findings of Congress upon which the Federal Coal Lease Act Amendments of 1976 were based, that the easy availability of Federal coal was prompting rampant speculation at the expense of the American citizen and the ultimate consumer. Availability of Federal coal in the Powder River basin is not the problem, nor will it be for many years, except in easily identifiable, isloated instances; maintenence leasing for existing and permitted mines.

The coal target and the secretarial issue document, finally made available to us over 7 months after its presentation to the Secretary of the Interior, clearly indicate that the 2.2-billion-ton lease target is part and parcel of an entirely new coal leasing program. It is leasing to meet the coal industry's demand for reserves and has absolutely no basis in anticipated demand for coal production in 1990. The end result will be to place much more of the Nation's coal reserves in the hands of a few large, capital-rich energy corporations and create a monopoly situation in one more energy source.

What is lost by this shift to a new coal leasing policy? Agriculture loses. Communities threatened with tremendous and uncontrollable social-economic impacts lose. Those who enjoy wildlife habitat lose. All of these values have been sacrificed based on a coal leasing target that has nothing whatsoever to do with need for the coal.

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I will submit with this testimony a compendium of our comments on this issue dating back to the amendment and update of the management framework plans on which the activity is based. These comments represent a historical record of our concerns for agricultural values, including surface and ground water supplies, social and economic impacts.[1]

I thank you for the opportunity to address our concerns before this committee and would be happy to answer any questions.

Senator MELCHER. I take it you do not oppose the proposed lease on the maintenance tracts such as those?

Mr. GILLIN. We don't oppose the lease. We may be interested in the permitting to make sure that there are certain conditions that are taken care of, particularly that we're getting into some real problems with ground water in some of that area, but not the lease itself, no.

Senator MELCHER. You mentioned, Bill, the impact on Ashland, Broadus, and Birney. What are those specific leases? Is that northwest and southwest Otter Creek, Decker-Birney, Coal Creek, Cook Mountain?

Mr. GILLIN. Yes; I think that's right. I think there's some of these.

Senator MELCHER. Yes. There's north Decker and west Decker, too.

Mr. GILLIN. Well, we've had quite a little personal experience with impact of small rural communities, and it would take me all day to go into it so I won't, but it's not near as nice as people can project it. There seems to be a shortfall of facilities and so on in these areas. The impact on schools is tremendous.

Senator MELCHER. How many of those proposals depend upon the railroad operation?

Mr. GILLIN. I think on these lower ones here, Otter Creek, Coal Creek, and Ashland, northwest Otter, all depend upon the railroad. The others, I think, are already served by railroad.

Senator MELCHER. In that whole group, the only one where there's an application for a mining permit is Decker-Birney, is it not?

Mr. GILLIN. I beg your pardon?

Senator MELCHER. Which one would cover the Montco?

Mr. GILLIN. Yes, I think it's the Ashland-Decker-Birney. Wouldn't that be it, Senator?

Senator MELCHER. Margie?

Ms. MCDONALD. The Montco permit does not depend on a Federal coal lease.

Senator MELCHER. It's fee coal?

Ms. MCDONALD. It's fee coal, yes. State.

Senator MELCHER. What's the projected production from that?

Ms. MCDONALD. Twelve million tons.

Senator MELCHER. Beginning when?

Ms. MCDONALD. 1986, I believe.

Senator MELCHER. And, therefore, it is not part of this?

Ms. MCDONALD. It's not.

Senator MELCHER. It's all fee coal?

Ms. MCDONALD. Yes. There may be some Federal coal in the late years of the mine plan which would come up around 2000, but that's not an issue.

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[1] See appendix.

Senator MELCHER. Would the railroad be constructed for just the Montco mine?

Ms. MCDONALD. The railroad has said at the regional coal team meeting that they would need the Federal mines in the Otter Creek area, Federal leases, to substantiate their investment.

Senator MELCHER. Are there any other mining applications in the Powder River basin that you're aware of on the Montana side that are fee coal and not involved in this Federal lease?

Ms. MCDONALD. Consol's CX, I believe. I don't know to what extent they're dependent on Federal leases. They do have a permit application on file, the Department of State lands.

Senator MELCHER. Mr. Ford with Consol will be testifying, and we can ask him.

In other words, the Montco proposal does not involve Federal coal. It is fee coal, and if it goes forward it will have a projected production of about 12 million tons of coal a year?

Ms. MCDONALD. That's correct.

Senator MELCHER. Which would be part of the 300-million-ton estimate of demand——

Ms. MCDONALD. That's correct.

Senator MELCHER [continuing]. For 1990?

Ms. MCDONALD. Yes.

Mr. GILLIN. Senator Melcher, Bob Tully here has a presentation he would like to make, too.

Senator MELCHER. All right. Go ahead, Bob.

STATEMENT OF BOB TULLY, NORTHERN PLAINS RESOURCE COUNCIL, BILLINGS, MONT.

Mr. TULLY. Senator, I would like to reiterate Mr. Gillin's sincere thanks for your having made this opportunity possible for us to be heard. I think it's timely and in the public interest for such hearings to be conducted.

I might preface my formal remarks with some observations, some of which were generated or suggested by testimony already heard. I would suggest that it might be realistic and proper for the Nation as a whole, the citizens of which as a body own this coal that we're talking about, to step back and consider some of the history of experience with regard to energy and its related matters that we have seen now through hindsight over the past 10 years.

I can remember the so-called experts from Government, from industry making forecasts and predictions and prophecies 10 years ago that, viewed through today's lenses, are ludicrous. Starting in 1971 with, for example, the northwest power bill, it's excused today and discredited to a certain degree as, "Oh, well, that was just a feasibility study," and so forth, but there were very definitely sugar plums dancing in the eyes of the energy industry when this document was drawn up, and I won't ask anyone to be so ridiculous as to say or consider where we might be today in America, and particularly in the Mountain West, if the northcentral power study had, in fact, become an entity. It is truly ridiculous.

But consider what we do have right today. We have a national glut of coal, and this is coal that productivity already exists for. The mines are permitted. They're equipped with machinery. The miners that

would possibly operate that machinery, in many instances, by the thousands today are out of work. We have undeniably a world oil glut with price depressing capability in existence today. No one denies it.

We have also heard stories about vast new deposits of natural gas that are claimed to be available to benefit the consuming public, and, of course, this is, in its cleanliness and ease of use and so forth, much more desirable fuel for public consumption than would be dirty old black coal. We have, in fact, a utility-overbuilt surplus-generating capacity in the United States. In other words, they've got more electric generating capacity than they know what to do with, meaning than they can sell. The Midcontinent Area Power Pool report, made up of some 40 midwestern utilities, has something in the neighborhood of 8,000 megawatts of surplus capacity, and if there are any people sitting in the room today who operate a farm or a ranch or own their home, and maybe do a little irrigating, last summer they began getting the bills to pay for a misjudgment on the part of the utilities with respect to what the Nation really needed in the way of generating capacity.

There are other experts in the industry-related field that were lugubriously wrong over the past 10 years, and if I just mention the name of a city in this country, Detroit, everybody knows what I'm talking about. They guessed wrong.

There has been some expert testimony given today that I question. I must. We have specifically two subjects that I am very much interested in. Make that three.

Surface owner consent. It has been implied, for example, today, "No change seen. No adjustment." Diligent development requirements have been stated to be unchanging and no problem when, in fact, both of those topics have been slated for adjustment and change, very possibly to the detriment in the first instance with regard to diligent development to the advantage of the mining industry.

There has been testimony, for example, with regard to the effect on the public as being negligible and of no consequence if this horrendous amount of public property is delivered into the control of corporate interests, and I suggest this is an inaccurate assessment of the realities of life.

We're all businessmen, and efficiency in business, we hear a great deal about that subject with regard to Government today. We have had candidates and elections—candidates run on that and elections consummated on that as a plank. Let's go across the board and really talk about being efficient, and in this regard we're talking about the efficiency of a department or an agency of Government in managing the public's property, and I submit overall that what is proposed by the Department of Interior with respect to coal leases is massive incompetence and massive mismanagement from a moral and a financial point of view as regards the public.

Without further ado, I will now swing into my formal statement and continue with more pertinent specific testimony.

The matter of Federal coal leasing in this region has long been a deep concern of mine and my neighbors. It was potential leasing activity in the early 1970's that helped spur us into forming the North- dates back to the original and unofficial moratorium under Rogers Morton of the early 1970's, through the genesis of EMARS I and EMARS II, the passage of the Federal Coal Lease Act Amendments

in 1976, and the establishment of the Federal coal management program under Cecil Andrus in 1979. We now are witness to the prospect of history repeating itself.

Mr. Gillin has aired the fundamental problems of the Powder River EIS and the lease target. I urge your consideration of some additional points that are directly relevant to this proposed sale and the future course of Federal coal leasing.

The Powder River basin—and here I reiterate some testimony already presented, but maybe my framework is a little different in assessing its points—contains 56 percent of recoverable Federal coal reserves under lease, amounting to 9.2 billion tons. Planned capacity for 1990 from Powder River basin mines, without any new Federal leases, ranges in the neighborhood of 370 million tons. We've heard this figure repeatedly during this morning. This is more than triple the 1980 production.

The Office of Technology Assessment reports, and I quote:

> The likely demand for Powder River Basin coal for 1990 falls substantially below the planned mine capacity. The most likely range of demand for Powder River Basin coal in 1990 will be 200 million to 225 million tons per year. Up to 155 million tons of capacity could be added on top of the 370 million tons after 1990 without any new Federal leasing.

We are faced with a situation where reality does not jibe with the rhetoric of the Federal Government's leasing program. Conceding that a lease sale is justified for those existing and permitted mines that will need Federal tracts over the next 10 years, the proposed sale this year of 2.2 billion tons is entirely out of order. Mr. Gillin has made it quite clear that our organization and membership has no interest or intent in any way to interfere with an ongoing operation, to deny an obviously reasonable area for additional or future production, given that the safeguards under law are adhered to, but we have no comment that these subsistence or pass-through, whatever, lease term—the term of what the lease is called escapes me at the moment—that is not our target. What we are questioning is the dumping, in effect, of a commodity on a bearish market and force feeding it into a pipeline that simply cannot swallow it.

I am not surprised to see the administration proposing to relax the diligence rules at the same time it is proposing this outlandish leasing target. Nothing demonstrates more plainly the superfluousness of the 1982 lease sale than the imminent reversion of billions of tons of Federal coal to the Federal Government.

In our estimation, the Powder River coal lease sale, as proposed, amounts to an administrative repeal of the Coal Lease Act Amendments of 1976. It is a return to the era when the Department of the Interior condoned speculation with the public's resources, and I have to inject here, possibly baldly stated, a charge that it does seem to be a blatant giveaway or sellout of the public interests to the energy industry.

The result of this tremendous overleasing in the Powder River coal region will be pressure to relax diligent development requirements of the 1976 amendments. Trade papers are now reporting that legislation is circulating between the coal industry and the Department of the Interior to accomplish precisely that end. Overleasing and speculation can be successfully carried off only if the diligent development and commercial quantities requirements are substantially weakened. Such

seems to be well in hand. Such an effort baldly contravenes the congressional mandate of 1976.

Senator Melcher, we recall your important role in reforming the past abuses of the Federal coal leasing program. The 1976 law was a landmark achievement in that reformation. The unfettered access to public coal in the 1960's did not bring energy to the consumers at a bargain-basement price. For the most part, the leasing of the 1960's did not bring energy to the consumers, but, rather, garnered some pretty surcharges for the speculators. We recall the fact that as Federal leasing skyrocketed, production from Federal leases actually declined.

When the issue had been thoroughly aired before Congress, the 1976 Coal Lease Act amendments passed with tremendous support, overriding a presidential veto to do so.

The proposed Powder River lease sale, and the proposed new coal leasing program, elevates the so-called marketplace to a rank commensurate with the holy grail. This elevation of a single consideration presents profound conflicts with some important responsibilities of the Federal Government to the American public, notwithstanding the marketplace. We should not confuse interest in leasing evidenced on the part of the industry with market demand for coal to benefit the public, the consumer, the rate payer, and use this as justification for additional massive coal leasing.

There is a fiduciary responsibility incumbent on departments of Government to garner competitive bids and fair market value for the public's resources. In the face of a well-documented coal glut, the Powder River lease sale target effectively shirks that responsibility.

There is a stewardship responsibility to protect the long term economic stability and renewable resources of the land. Again, the proposed sale overrides this responsibility, as we have testified.

There is a management responsibility. The plight of local governments is overwhelming when overleasing occurs. Their abilities to plan adequately for impacts, to pace developments, and to responsibly administer the applicable laws are significantly compromised.

Senator Melcher, you are probably more cognizant than any Member of Congress of the unique and unsettling conflict inherent in split estate land patterns of the West. The fact is that the unwarranted leasing of vast acreages cuts the agricultural economy on the surface off at the knees, so to speak. Most of the Federal coal is overlain by privately owned surface. The irresponsible transfer of that subsurface coal to the energy industry breeds enormous instability and insecurity for agricultural operators. Landowners are necessarily reluctant to plan for or invest in a future that is shadowed by the uncertainties of potential strip mines and mine-mouth industries.

It is ironic that we are discussing in 1982 precisely the issues hashed out in the mid-1970's. The Powder River lease sale is part and parcel of a larger step back into time being ventured with the proposal of the new coal leasing, land use planning, and diligent development rules.

We advocate that the committee recognize the importance of stability in the leasing program, exercise its influence and authority to restrain and lower the proposed lease target to maintenance tracts for the time being, and to staunchly defend the 1976 amendments.

Thank you, Senator, very much for this opportunity.

[The prepared statement of Mr. Tully follows:]

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TESTIMONY OF BOB TULLY

BEFORE THE SENATE COMMITTEE ON ENERGY AND NATURAL RESOURCES

HEARING ON THE PROPOSED 1982 POWDER RIVER COAL LEASE SALE AND GOALS

FEBRUARY 22, 1982

BILLINGS, MONTANA

SENATOR MELCHER, I ENDORSE WHOLEHEARTEDLY THE OPPORTUNITY FOR THIS HEARING. THE MATTER OF FEDERAL COAL LEASING IN THIS REGION HAS LONG BEEN A DEEP CONCERN OF MINE AND MY NEIGHBORS. IT WAS POTENTIAL LEASING ACTIVITY IN THE EARLY 1970'S THAT HELPED SPUR US INTO FORMING THE NORTHERN PLAINS RESOURCE COUNCIL. OUR INVOLVEMENT IN THESE QUESTIONS DATES BACK TO THE ORIGINAL AND UNOFFICIAL MORATORIUM OF THE EARLY SEVENTIES, THROUGH THE GENESIS OF EMARS I AND EMARS II, THE PASSAGE OF THE FEDERAL COAL LEASE ACT AMENDMENTS (FCLAA) IN 1976, AND THE ESTABLISHMENT OF THE FEDERAL COAL MANAGEMENT PROGRAM UNDER CECIL ANDRUS IN 1979. WE NOW ARE WITNESS TO THE PROSPECT OF HISTORY REPEATING ITSELF.

MR. GILLIN HAS AIRED THE FUNDAMENTAL PROBLEMS OF THE POWDER RIVER EIS AND THE LEASE TARGET. I URGE YOUR CONSIDERATION OF SOME ADDITIONAL POINTS THAT ARE DIRECTLY RELEVANT TO THIS PROPOSED SALE AND THE FUTURE COURSE OF FEDERAL COAL LEASING.

THE POWDER RIVER BASIN CONTAINS 56% OF RECOVERABLE FEDERAL COAL RESERVES UNDER LEASE, AMOUNTING TO 9.2 BILLION TONS.

Planned capacity for 1990 from Powder River Basin mines - without any new federal leases - ranges in the neighborhood of 370 million tons. This is more than triple the 1980 production.

The Office of Technology Assessment reports:

"The likely demand for Powder River Basin coal for 1990 falls substantially below the planned mine capacity. ...(T)he most likely range of demand for Powder River Basin coal in 1990 will be 200 million to 225 million tons per year....Up to 155 million tons of capacity could be added (to the 370 million tons) after 1990 without any new federal leasing."

We are faced with a situation where reality does not jibe with the rhetoric of the federal government's leasing program. Conceding that a lease sale is justified for those existing and permitted mines that will need federal tracts over the next ten years, the proposed sale this year of 2.2 billion tons is entirely out of order.

It is dumping a commodity on a "bear"-ish market and force-feeding it into a pipeline that cannot swallow it.

I am not surprised to see the Administration proposing to relax the diligence rules at the same time it is proposing this outlandish leasing target. Nothing demonstrates more plainly the superfluousness of the 1932 lease sale than the imminent reversion of BILLIONS of tons of federal coal to the federal government.

In our estimation, the Powder River coal lease sale - as proposed - amounts to an administrative repeal of the Coal Lease Act Amendments. It is a return to the era when the Department of Interior condoned speculation with the public's resources.

The result of this tremendous over-leasing in the Powder River coal region will be pressure to relax diligent development requirements of the 1976 Amendments. Trade papers are now reporting that legislation is circulating between the coal industry and the Department of Interior to accomplish precisely that end. Over-leasing and speculation can be successfully carried off only if the diligent development and commercial quantities requirements are substantially weakened. Such an effort baldly contravenes the Congressional mandate of 1976.

Senator Melcher, we recall your important role in reforming the past abuses of the federal coal leasing program. The 1976 law was a landmark achievement in that reformation. The unfettered access to public coal in the Sixties did not bring energy to the consumers at a bargain basement price. For the most part, the leasing of the Sixties did not bring energy to the consumers; but rather garnered some pretty surcharges for the speculators. We recall the fact that as federal leasing sky-rocketed, production from federal leases actually declined!

When the issue had been thoroughly aired before Congress, the 1976 Coal Lease Act Amendments passed with tremendous support,

OVERRIDING A PRESIDENTIAL VETO TO DO SO.

THE PROPOSED POWDER RIVER LEASE SALE - AND THE PROPOSED NEW COAL LEASING PROGRAM - ELEVATES THE SO-CALLED "MARKET-PLACE" TO A RANK COMMENSURATE WITH THE "HOLY GRAIL." THIS ELEVATION OF A SINGLE CONSIDERATION PRESENTS PROFOUND CONFLICTS WITH SOME IMPORTANT RESPONSIBILITIES OF THE FEDERAL GOVERNMENT TO THE AMERICAN PUBLIC - NOTWITHSTANDING THE "MARKET-PLACE."

THERE IS A FIDUCIARY RESPONSIBILITY TO GARNER COMPETITIVE BIDS AND FAIR MARKET VALUE FOR THE PUBLIC'S RESOURCES. IN THE FACE OF A WELL-DOCUMENTED COAL GLUT, THE POWDER RIVER LEASE SALE TARGET EFFECTIVELY SHIRKS THAT RESPONSIBILITY.

THERE IS A STEWARDSHIP RESPONSIBILITY TO PROTECT THE LONG-TERM ECONOMIC STABILITY AND RENEWABLE RESOURCES OF THE LAND. AGAIN, THE PROPOSED SALE OVERRIDES THIS RESPONSIBILITY, AS WE HAVE TESTIFIED.

THERE IS A MANAGEMENT RESPONSIBILITY. THE PLIGHT OF LOCAL GOVERNMENTS IS OVERWHELMING WHEN OVER-LEASING OCCURS. THEIR ABILITIES TO PLAN ADEQUATELY FOR IMPACTS, TO PACE DEVELOPMENT, AND TO RESPONSIBLY ADMINISTER THE APPLICABLE LAWS ARE SIGNIFICANTLY COMPROMISED.

SENATOR MELCHER, YOU ARE PROBABLY MORE COGNIZANT THAN ANY MEMBER OF CONGRESS OF THE UNIQUE AND UNSETTLING CONFLICT INHERENT IN SPLIT ESTATE LAND PATTERNS OF THE WEST. THE FACT IS THAT THE UNWARRANTED LEASING OF VAST ACREAGES CUTS THE

AGRICULTURAL ECONOMY ON THE SURFACE OFF "AT THE KNEES," SO TO SPEAK. MOST OF THE FEDERAL COAL IS OVERLAIN BY PRIVATELY-OWNED SURFACE. THE IRRESPONSIBLE TRANSFER OF THAT SUBSURFACE COAL TO THE ENERGY INDUSTRY BREEDS ENORMOUS INSTABILITY AND INSECURITY FOR AGRICULTURAL OPERATORS. LANDOWNERS ARE NECESSARILY RELUCTANT TO PLAN FOR OR INVEST IN A FUTURE THAT IS SHADOWED BY THE UNCERTAINTIES OF POTENTIAL STRIP MINES AND MINE-MOUTH INDUSTRIES.

IT IS IRONIC THAT WE ARE DISCUSSING IN 1932 PRECISELY THE ISSUES HASHED OUT IN THE MID-SEVENTIES. THE POWDER RIVER LEASE SALE IS PART AND PARCEL OF A LARGER STEP BACK INTO TIME BEING VENTURED WITH THE PROPOSAL OF THE NEW COAL LEASING, LAND USE PLANNING AND DILIGENT DEVELOPMENT RULES.

WE ADVOCATE THAT THE COMMITTEE RECOGNIZE THE IMPORTANCE OF STABILITY IN THE LEASING PROGRAM, EXERCISE ITS INFLUENCE AND AUTHORITY TO RESTRAIN AND LOWER THE PROPOSED LEASE TARGET TO MAINTENANCE TRACTS FOR THE TIME BEING, AND STAUNCHLY DEFEND THE 1976 AMENDMENTS.

THANK YOU SENATOR FOR YOUR CONSIDERATION.

Senator MELCHER. Well, thank you, Bob. I don't know that I'm the best person to untangle all of this. After all, I have to keep in mind what Will Rogers said when he said he'd become a student of history. He had a particular interest in ancient history, and was looking at the Roman Empire and everything that went into putting it together. He said that when he learned that Rome was governed by a senate with a bunch of senators, he wasn't surprised at all at the ultimate fall and collapse of the empire.

What do you know about any weakening of proposals, if there are any, to change the surfaceowner's consent in the 1976 Strip Mine Act?

Mr. TULLY. Well, it's our understanding, we haven't been furnished with the paperwork, that the mechanism through which a surfaceowner establishes his bona fides has been adjusted, changed, whatever. Burden of proof is now upon the surfaceowner to come forward and say, "I'm a surfaceowner, and here are my qualifications, and I don't want this to be done to my land." Heretofore, prior to that proposal, the condition existed that it was incumbent upon the Federal Government's agencies, Bureau of Land Management, USGS, Department of the Interior, to search out the surfaceowner and say, "What is your desire? What are your wishes in this matter with respect to strip mining?" And this was obviously the intent of the Congress when they passed the bill, that the person, the individual landowner, would have the option of a yes or a no definitely awarded him. It now seems that he has to go through something of a struggle to even qualify as a tester in the equation, and on top of that, the timing of his wishes has been proposed for change; the timing at which he puts forth his wishes has been adjusted. Further, that if he doesn't do anything, he is assumed to be in agreement with what's been proposed. This is taken for granted, I understand, under what's been proposed for rule and regulations changes with respect to surfaceowner consent. I'm not sure whether you asked about diligent development or not.

Senator MELCHER. No. I want to stick with the question of surfaceowner consent right now.

When you say there's a change, the surfaceowner would be identified by the deed, the recorded deed. Mr. Richards, Mr. Cannon Richards said that he knew of no problem. I'm trying to understand if there is a problem. A recorded deed is available. What follows from that?

Mr. TULLY. Well, what I'm trying to point out, Senator, is that Mr. Richards, as I understood, testified that there were no foreseen changes by the Department in the surfaceowner consent or diligent development requirement rules, guidelines, whatever, and it's our understanding that that is not correct. We have information, written matter, to the effect that those are being adjusted, in fact, to the detriment of the surfaceowner and to the advantage of the coal operator. And so I wanted to get it on the record that it isn't a case of "Everything's just like it's always been, folks." We do have some changes coming.

Senator MELCHER. What changes would there be? The deed is recorded.

Mr. TULLY. Well, let me turn that over to Margaret McDonald. She's our research analyst and an expert on it, if you will.

Senator MELCHER. All right.

Ms. McDONALD. Senator, the Department of the Interior published, on December 16, draft rules that would alter the surfaceowner consent provisions under the coal leasing program. They require, No. 1, that during the land use planning process, surfaceowners who are qualified must prove their qualifications to the Agency. This currently is being done by the Agency. In other words, the Agency surveys the surfaceowners. It can go to the courthouse and check out and see whether or not they meet qualifications. If they don't they can check out further directly with the landowner.

Under the new program, they don't describe quite what a landowner is supposed to go through, but the surfaceowner must prove his qualifications. The next step——

Senator MELCHER. What would be proof other than a recorded deed?

Ms. McDONALD. They don't specify.

Senator MELCHER. They don't specify?

Ms. McDONALD. Well, the other factors in the law, of course, are the length of time.

Senator MELCHER. Of ownership, and that's recorded.

Ms. McDONALD. Yes.

Senator MELCHER. Presumably.

Ms. McDONALD. Presumably.

Senator MELCHER. All right.

Ms. McDONALD. The other major change in the surfaceowner provisions would be that if the surfaceowner fails to respond during that land use planning stage, which many of them will not have done, as we have found out, for lack of an understanding of the process and the program and what's being done. I mean some of those letters from BLM went straight to the garbage can, so to speak, and that tract is then carried forward through activity planning, and under the new rules they would literally offer that land up for sale, up for sale and have it bid upon and then leave it to the winner of the bid to go out and try to extract the consent from the surfaceowner after it's already been offered at the Secretary's lease sale.

Senator MELCHER. Well, I would feel there would be two fallacies, and in fairness to everyone involved, whether it's the Federal Government or the potential owner of a lease involving Federal coal under privately owned land, that my intent with the language and the intent of Congress is that the surfaceowner must be approached for consent, that the lease itself, without that consent, would be invalid until the consent were given, and any deviation from that would be subject not only to litigation but to rather thorough scrutiny by Congress itself. If there are such proposed regulations that the Secretary is interested in, I think it would benefit the Secretary to consult with us in Congress. We're not past the point of interest.

Mr. TULLY. Senator, I think a point that makes sense to us—I mentioned earlier that we're all businessmen. Most of our membership, as you know, are farmers and ranchers, operating our own businesses. It seems to be a pitfall, given the conditions under which surface consent is investigated by an agency of the Government, to establish a lease tract, to allow a good deal of work to go on and possibly some exploratory expenditure on the part of the coal company to be con-

ducted before that point in time where the surfaceowner says, "Nothing doing. I never meant to let anybody do anything like that on my land." So often in recent years we have heard of the plea that, "Listen. We've invested so many million dollars in this project, you can't say no to us," to government agencies, State, Federal, to permit an industrial activity of one sort or another, and, in many instances, it seems to carry a lot of weight. Investment and dollars. We seet his as a weakness and a shortcoming in the planning process, providing for leasing, to allow a lot of the machinery to grind and the process to go forward and then they come up against the landowner eventually in securing his personal written consent and you don't get it. You have a situation there where this might work to the detriment, in that instance, of the mining concern.

Senator MELCHER. Well, our line of reasoning, in clarifying the law on surface owner's consent, goes back to the original withholding of the ownership of the coal by the Federal Government at the time of the modification of the Homesteading Act. We took note of the act that allowed for the homesteading of land where the coal was to be reserved to the United States. The colloquy that occurred in the debate at that time stressed that the landowner would only be restricted from access to a mine shaft to the necessary land involved in extracting the coal by underground mining. Obviously the intent of Congress was not to retain the ownership of the coal while letting a homesteader homestead and gain surface ownership, only to come into a new era where strip mining is done and all of the land is taken in the process of strip mining, and, therefore, we were following out what was the intent of Congress originally, not to take away the surface area from the owner of the land. Consequently, it hardly fits any semblance of commonsense that the landowner isn't approached prior to any serious consideration of mining the coal.

There were a tremendous number of outstanding Federal coal leases when we made this a part of the law in the 1976 act, and it isn't up to the surface owner to seek out the Federal agency or the potential lessor of the Federal coal. It's up to the Federal Government and the lessor, potential lessor, of the Federal coal to obtain from the surface owner that consent.

I just feel rather strongly that a word of wisdom is due here, despite what Will Rogers said about Senators, and the Roman senators.

Mr. TULLY. Well, I'm gratified to hear you say that, Senator. What we are suggesting is that the intent and obvious meaning of Congress seems possibly to be avoided and/or distorted in the proposals of the rules and regulations that we see suggested.

Senator MELCHER. I haven't had any real discussion with anybody in the Department of Interior on the draft proposals submitted. That doesn't mean we won't have any discussions but the regulations frequently get people into trouble, and I think it's wise that we carefully look at what that trouble might be. I think the requirement of surface owner consent should not rest on the surface owner to initiate the move to give the Department his or her consent. It's up to both the Federal agencies representing the United States and the potential lessors of the coal to make the move to get the consent, and anything that would avoid that jeopardizes the legality of the Federal coal lease itself. That's the clear intent of the law, and there are plenty of us

around that can enunciate that clear intent again. I'll make certain that the Department of Interior is aware of that.

We haven't talked about any coal other than Powder River coal. What's going on in areas other than the Powder River basin in Montana that would contribute to the additional supply of coal that is estimated to be needed by 1990?

Mr. TULLY. You're referring to Federal or non-Federal, or lumped together?

Senator MELCHER. Any and all.

Mr. TULLY. We understand there's activity or interest in activity in western North Dakota and extreme eastern Montana, the Red Water District, Golden Valley County in North Dakota, an area near Circle and Wibaux. Miss McDonald could give you much more precise information than I. This is off the top of my head, but there are other areas that investments have been made in and interest has been evidenced in, yes; considerably.

Ms. MCDONALD. Senator, the Fort Union regional coal team has proposed a recommendation to the Department of Interior, or is commencing, I guess, an environmental impact statement on the coal sale to be held in 1983 in the Fort Union coal region, and the target as recommended by the team was somewhere—was a range from 400 to 800 million tons, which the assistant secretary for land and water subsequently has recommended be raised to 800 to 1,200 million tons for that coal sale. It's a similar pattern to the Powder River region in that the target is probably—appears to be coming up to a level that would be the maximum amount of Federal coal available from the region in this sale, which is what we also have seen in the Powder River coal regional sale.

Senator MELCHER. In that area, much of the coal is privately owned, is it not?

Ms. MCDONALD. There is a lot of Burlington Northern checkerboard fee coal. There is also a great deal of Federal coal out there.

Senator MELCHER. We mined about 800 million tons of coal last year, and Chris Farrand said perhaps by 1990 the demand would be 1.2 billion tons. That would be an increase of 400 million tons, which could come from all over the United States. So besides the Powder River basin coal, we're also talking about Fort Union coal?

Ms. MCDONALD. That's correct.

Senator MELCHER. Which is about the same amount of Btu?

Ms. MCDONALD. No. It's primarily lignite coal. It's primarily being discussed for feedstock and synthetic fuels or other nine-month coal facilities. There are also additional coal sales scheduled from the Department of Interior in other coal regions.

Senator MELCHER. We've heard the Peabody representative, Mr. Farrand, mention that they've been consulted on diligent development requirements, principally about old coal leases, whether or not they've going to be renewed and whether, in renewing them automatically, the diligent development requirements would apply, and if so, at what point. Is that what you're referring to, Bob?

Mr. TULLY. This is what we're worried about, yes. That's one facet of worry. We had a great deal to criticize with the original due diligence requirements. They seemed sort of Swiss cheezy to us as far as, for example, assuring the public, who owns the coal, a return, and when

does that return occur? When do they start getting the royalties? And so forth and so on.

I don't pretend to be an expert on these diligent development requirements, but it seems to me I recall that you could qualify if you were a coal company by assigning 1 percent of your production elsewhere, in other words, on fee coal or State coal, railroad coal, to qualify it as due diligence in order to hold a Federal lease that was adjacent to your operation, and feasibly to be employed or utilized in that ongoing operation at some unknown time in the future. But if your mining plan just physically didn't fit in with investing in the Federal deposit soon, but, rather, 10 or 20 years down the road, you could hold that lease and qualify for it by assigning and making the payment equal to 1 percent of your resource, reserve held. Mr. Ferrand, if he's still here, could correct me on that. I'm not sure of it.

Senator MELCHER. I think he had to catch his airplane, but we have some other coal company people here, I'm sure, who can clarify that for us.

Mr. TULLY. From a layman's point of view, which is where I've got to come from, it has always appeared to us, quite simply, maybe too easy to hold vast public resource reserves for use at your business decision, whim, timing, something in the future through the diligent development requirements. In other words, they seemed to be a toothless tiger.

Senator MELCHER. All right. Thank you all very much.

Mr. TULLY. Thank you, Senator.

Mr. GILLIN. Thank you.

Senator MELCHER. Don Unrau, Kiewit Mining and Engineering.

STATEMENT OF DON UNRAU, DECKER COAL CO., AND KIEWIT MINING AND ENGINEERING, OMAHA, NEBR.

Mr. UNRAU. Senator, thank you for inviting us to comment at this hearing. My name is Don Unrau, and I represent Decker Coal Co., and Kiewit Mining and Engineering.

Peter Kiewit Sons' Co., has held Federal coal leases in Montana since the early 1960's. At that time Kiewit purchased five Federal coal leases in the Decker, Mont., area. At the present time, Kiewit's mining activity in Montana is limited to being the operating partner in a joint venture with Nerco in the Decker mines, which are producing in excess of 10 million tons per year.

Kiewit feels that it is in the Government's best interest, as well as in our best interest, to allow existing and proposed mines to expand in a logical manner into presently unleased Federal coal. This logical expansion should not be stopped or hindered in any way by establishing an artificial ceiling on the amount of coal the Federal Government can lease.

In 1975 Decker applied to the BLM for a lease modification between existing Decker Federal leases and the Tongue River Reservoir. Due to the size of the tract, this application was changed to an emergency bypass lease application. After a considerable amount of time and money was spent, this lease was offered for sale in December 1979 with a minimum bonus of $5,523.63 per acre with a 12.5-percent royalty. Based on the cost of mining the coal and other considerations, Decker felt that the minimum bonus bid was unreasonably high and declined to bid on

the property. In February 1980, Decker reapplied for the emergency bypass lease on this property and has waited and worked since that time to have the BLM offer this lease for sale. The process we followed is called the emergency leasing provision and theoretically allows a company to obtain a lease needed to meet production requirements or mine coal that would be bypassed if not mined in conjunction with an existing operation within a reasonable time. Decker has not been successful in bringing this property to lease as of today. To the best of my knowledge, the property will be offered for sale in the proposed Powder River sale scheduled for April 1982.

Since 1970, Decker has attempted to modify and add needed additional reserves by acquiring emergency leases adjacent to the Decker mine. In April 1981, Decker was the successful bidder on an emergency coal lease that added approximately 21 million tons of coal to the West Decker mine. This was the result of an emergency lease application dated June 1977. We question whether a 4- to 7-year processing period is reasonable.

Due to our experiences with the emergency leasing provision, we feel it is imperative that the BLM offer for lease tracts surrounding existing or proposed mines as soon as possible and with a reasonable bonus bid to allow companies such as Kiewit to proceed with the mine development and permitting process.

All of Kiewit's Federal leases in Montana are permitted and are being mined or are in the permitting process. It is our intent to develop our property as soon as feasible.

Kiewit believes that sufficient safeguards are built into the leasing and permitting system to discourage individuals or corporations from speculating in Federal coal. The current regulations require Federal lessees to meet diligent development requirements within 10 years of obtaining a Federal lease. In the event the lessee cannot meet diligence requirements the lease would be forfeited. Also, the current law limits the Federal acres that one individual or corporation can have under lease. These two regulations allow the Federal Government to effectively control the coal that they have leased.

The State of Montana has control over the Federal leasing in the State through the regional coal teams and also in the permitting process. Current permits are issued for a 5-year period, and if the property cannot be brought into production within 3 years, the State would have a chance to reconsider any action they had taken in issuing the permit. The most significant impact on Montana would be the positive impact if the proposed lease tracts would be purchased and put in production as soon as possible. Montana would then receive the substantial financial benefits of the mining activities.

Finally, Kiewit believes that there should be enough coal offered to afford existing mining operations the ability to expand in a logical manner and also to offer the opportunity for additional new mines to be developed to meet the Nation's energy needs. Although the current coal market is not at the level we would like to see it, we believe that the demand for western coal will increase and that the Federal Government, as a large coal and surface owner in the Western States, as well as the coal mining industry, should be prepared to meet that demand. To meet the requirements in the future, industry will have to be able to develop plans to mine properties well in advance and not wait until the demand is at its peak before starting the leasing, per-

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mitting, and mining process. Kiewit believes that placing artificial limits on Federal leasing results in costly delays to the Government and industry resulting in higher costs to the public.

Thank you.

Senator MELCHER. Don, I'm going to ask a question right off the bat here and then you may proceed with your testimony.

You say that Federal Government is a large surface owner in Western States. In most of the proposed coal leases that I am aware of or have any personal knowledge of, the Federal Government does not own the surface. I don't know anything about the Wyoming side of this situation, but in the Decker area, is there some Federal ownership of the surface?

Mr. UNRAU. Yes, there is some Federal ownership. The majority is fee owned.

Senator MELCHER. The majority is?

Mr. UNRAU. But there is some Federal.

Senator MELCHER. This rather high minimum bonus that you spoke of back here on the first page in your third paragraph——

Mr. UNRAU. Yes.

Senator MELCHER [continuing]. $5,523.63 per acre, was that Federal? Was the surface federally owned?

Mr. UNRAU. No. The surface was owned by Decker Coal.

Senator MELCHER. Decker had acquired the surface?

Mr. UNRAU. That's right.

Senator MELCHER. How big a lease was that?

Mr. UNRAU. That approximately was around, well 500 acres at that time, I believe.

Senator MELCHER. What was the reason for setting the minimum bonus that high?

Mr. UNRAU. Well, I really can't answer that. You'd have to ask USGS or BLM. We couldn't understand that, either.

Senator MELCHER. And this was an emergency lease? It was a maintenance lease?

Mr. UNRAU. This was a lease or an application for coal that lies between the Tongue River Reservoir and the proposed North Decker mine.

Senator MELCHER. Does the North Decker mine adjoin it?

Mr. UNRAU. Yes.

Senator MELCHER. It did?

Mr. UNRAU. It adjoins it. The North Decker mine is not in operation, I might add. That's the one that we're in the final permitting process on.

Senator MELCHER. It would be bypassed coal?

Mr. UNRAU. Yes.

Senator MELCHER. And now that is to be offered now, in this 1982 proposal?

Mr. UNRAU. The last conversation I have had with the Department of Interior, they have informed us that they would like to offer that in 1982 sale as a separate tract, yes. and I don't know. I think you show one North Decker tract probably in your information. As I understand, that will be split into two tracts, the first being the emergency application lands and the remainder being offered as a separate lease.

Senator MELCHER. You're mining at the level of 10 million tons per year now?

Mr. UNRAU. A little bit in excess of that, but around there.

Senator MELCHER. Is all of it federally owned coal?

Mr. UNRAU. No.

Senator MELCHER. Some of it is fee?

Mr. UNRAU. We have a State section of West Decker that is bearing the brunt of the production here at the present time.

Senator MELCHER. What do you project by the year 1990 you would be mining per year?

Mr. UNRAU. Well, Decker has the capacity to mine 16 to 20 million tons a year. We don't have contracts to meet that production requirement.

Senator MELCHER. Your main concern, then, is for leases that join your present operation or projected operation that's under the permitting process right now?

Mr. UNRAU. Our major activity with the leasing system in the last 5 to 7 years has been with the emergency bypass type leasing.

Senator MELCHER. Have you been consulted by the department on those procedures?

Mr. UNRAU. As far as changes in the procedures? Yes.

Senator MELCHER. You believe there are sufficient safeguards built into the leasing and permitting system to discourage speculating on Federal coal, but with this large a sale—2 billion tons, do you think there will be bids on all of it?

Mr. UNRAU. I anticipate there will be bids on all the tracts.

Senator MELCHER. You purchased five Federal coal leases in the early 1960's, all in the Decker area?

Mr. UNRAU. That's correct, in Montana.

Senator MELCHER. In Montana, yes.

Mr. UNRAU. Yes.

Senator MELCHER. Now what's your comment on some of those leases? Has the permit for those leases run out? Do you have to renew one?

Mr. UNRAU. Up for readjustment, you mean?

Senator M'LCHER. Yes.

Mr. UNRAU. They'll be up for readjustment starting in 1983, 1984, and 1986, basically.

Senator MELCHER. Have you been asked for comments, then, on how the diligent development——

Mr. UNRAU. Affects those leases?

Senator MELCHER. Yes.

Mr. UNRAU. I'm not sure we've been asked for comment specifically on how it affects those leases. We aren't concerned about holding those leases even in the face of the diligent development requirement as it stands now. We anticipate meeting those.

Senator MELCHER. If it were applied to it——

Mr. UNRAU. We think we'll be OK.

Senator MELCHER. So you will be all right on those leases.

In your testimony, you referred to an artificial ceiling being placed by the Federal Government on coal. Are you referring to the fact that projections for market demand are considered to determine the potential lease sales?

Mr. UNRAU. Well, I guess we feel it's awfully difficult to project what the market will be in 10, 15, 20 years, you know. You never—I don't know if we can base the amount of coal that should be offered on what

somebody thinks that the market will be. I think we've all seen the market change drastically in the last 5 years.

Senator MELCHER. Is it because we've gone through a moratorium that we think we ought to put up a lot of coal right now for lease or is it the feeling that if we don't put up a lot in 1982, there would be sales for several years after that in the Powder River basin?

Mr. UNRAU. Well, due to the fact that it's going to take, even after a sale, it's going to take a considerable time to get a mine plan developed, to get it permitted, that type of thing, and then on top of that to get the coal sold, you're looking at even from the nearest production of, you know, 6 to 10 years, any way you look at it.

Senator MELCHER. Yes, I understand that, but if you didn't use market demand, what factors would you look at?

Mr. UNRAU. I guess we feel that as Mr. Farrand was saying, the first comments you heard, that you don't see a lot of harm in leasing Federal coal. I think it will be more beneficial and be economically—it's not going to be a bad decision, you know, to get on to refer to what Mr. Farrand commented.

Senator MELCHER. Wouldn't another factor be more frequent sales?

Mr. UNRAU. Is there a possibility, you say? Would that be an answer to the problem?

Senator MELCHER. Wouldn't that be one of the factors that could be considered? If you can't project market demand, and nobody can with any degree of accuracy, wouldn't it follow that one of the considerations should be anticipation of sales in more frequent periods of time? We know of a limited sale that will be offered in 1984, but it would be very limited.

Mr. UNRAU. Yes. I guess if that's possible, that could be a possible solution to the problem. I think we have to look at all kinds of things then, you know, planning and all kinds of things in there, whether that would fit into the schedule.

Senator MELCHER. Doesn't a lot of your testimony really go to the point of whether or not bypass coal or so-called emergency or maintenance coal leases are allowed?

Mr. UNRAU. I guess we're concerned that we are able to expand our mining operations, our existing mining operations, in a logical manner.

Senator MELCHER. Yes.

Mr. UNRAU. And not haphazardly being told where to expand those operations or whether to base new mining operations adjacent to our existing mines on some theories.

Senator MELCHER. The most efficient operation is always going to be the expansion of an ongoing operation, is it not?

Mr. UNRAU. Well, I guess if you can take everything equal. At a certain point, you know, the mining costs—for example, at one of our mines at West Decker, that's going to be true up to a certain point, but all of a sudden you get to a considerably higher stripping ratio, then that really isn't a correct statement.

Senator MELCHER. The topography and a lot of overburden could change, and that may not be true?

Mr. UNRAU. That's correct.

Senator MELCHER. But at this point in time, at least in your Montana operations, the most important thing to you is maintenance of leases or emergency leases, whatever term we want to apply to them?

Mr. UNRAU. That's correct.

Senator MELCHER. How about in Wyoming?

Mr. UNRAU. I guess we are looking at, more accurately, for new operations in the Wyoming area.

Senator MELCHER. Opening some new mines?

Mr. UNRAU. Right.

Senator MELCHER. What would you project might be your total

Senator MELCHER. What would you project might be your total projection, both in Montana and Wyoming, by 1990?

Mr. UNRAU. Based on existing contract levels that we have?

Senator MELCHER. Yes.

Mr. UNRAU. I suppose—I can just give you a guess—between 20 and 30 million tons. Someplace in there.

Senator MELCHER. About half of that would be in Montana, or perhaps more than half, but even so if you go to the 16 million tons in Montana, you don't have contracts to cover all of the 16 million tons?

Mr. UNRAU. No.

Senator MELCHER. You'd have to have some new contracts?

Mr. UNRAU. Yes.

Senator MELCHER. All right. Thank you very much.

Mr. Rod Ford, manager, western exploration for Consolidation Coal Co.

STATEMENT OF RODNEY FORD, REGIONAL EXPLORATION MANAGER, CONSOLIDATION COAL CO.'S WESTERN EXPLORATION DIVISION, DENVER, COLO.

Mr. FORD. I have a prepared statement to read.

My name is Rodney Ford. I am the regional exploration manager for Consolidation Coal Co.'s Western Exploration Division in Denver.

First, I would like to say that I appreciate the opportunity to comment on the proposed 1982 Powder River coal lease sale, and, more specifically, the assessment of Federal leasing by the Office of Technology Assessment.

In this assessment, the OTA cites various pros and cons concerning additional leasing in the Powder River basin. Although the assessment appears comprehensive, we feel it fails to identify certain aspects of major concern to the mining industry.

For the past decade, mining companies who desired to establish a position in the West were forced to do so by acquiring private coal interests or surface overlying Federal coal. Today, in most cases, these areas require additional Federal leasing in order to assemble a feasible mining block. The mineability of these reserves requires additional Federal leasing if the value of these assets is to be retained. Restricting Federal leasing, in essence, confiscates this value.

Continuation of leasing at currently proposed levels is necessary to assure regional competitiveness. Should leasing be restricted, those companies which control reserves that can be developed without additional Federal leasing would have the potential to monopolize a market area.

The recent moratorium on leasing restricted entry possibilities to leaseholding and an additional restriction would interfere with the workings of the free market. Leasing levels are predetermined by the Department of Energy. However, the actual mining of coal is dictated

by market forces. A company will not lease coal that could not be marketed only to lose the lease to diligent development.

Other uncertainties of the OTA's assessment concerning a low demand for Western coal include the assumption that the demand for coal for synfuels will not reach significant proportions by 1991 and the possibility of a soft export market. We disagree with the contention of opponents to additional leasing that leasing can be safely deferred until its necessity can be indicated by a realistic demand forecast. This strategy does not allow sufficient time for premine development stages, such as environmental considerations, engineering, and permitting and construction requirements, in order to safely meet future demands.

At a time of increasing Federal deficits, how can the Government afford to forgo this opportunity for additional revenue? It has always been our contention that the public is always best served by the lowest energy costs. In order to insure that these interests are wisely served, it is imperative that additional Federal leasing in the Powder River Basin, as well as the remaining areas of the Western States, be allowed at continued levels that will assure competitive marketing.

In addition, Consolidation Coal Co. has been in the West for several years. We presently control one Federal lease in the Powder River basin. This is in Montana at our CX Ranch, and we are in the process of acquiring additional Federal leases there through the northern Cheyenne legislation. We also have several PRLA's within the Gillette area that have not gone on as yet.

Senator MELCHER. Well, Mr. Ford, there is no assurance, that I am aware of, that offering a lot of coal at one time creates more revenue for the Treasury.

Mr. FORD. No; but I guess our contention is that most of the coal in the West right now that can be marketed is in private hands, and, of course, in that situation, the Government is going to receive none of that as revenue.

Senator MELCHER. Well, by being in "private hands," do you mean that most of the coal that's——

Mr. FORD. That is available right now for new development.

Senator MELCHER. Is already leased?

Mr. FORD. Yes; it's already leased, or is the private coal that can be developed, also.

Senator MELCHER. What coal would fall into that category?

Mr. FORD. Private leases per se in Utah, Colorado, some railroad coals, particularly in Wyoming and Montana.

Senator MELCHER. Well——

Mr. FORD. Many of these, most of these——

Senator MELCHER. You're not recommending that we change 2(c), are you?

Mr. FORD. No, no. What I'm saying is——

Senator MELCHER. They're not.

Mr. FORD. Many of the holdings in the West right now are tied up. We have a substantial number of railroad leases from the Burlington Northern.

Senator MELCHER. Yes; all right. But you won't develop them unless you get some Federal leases to go with it?

Mr. FORD. We can't.

Senator MELCHER. Cannot.

Mr. FORD. Right.

Senator MELCHER. It's impractical?

Mr FORD. Impractical. Very much so.

Senator MELCHER. Well, I don't think there's any argument with your general philosophy, but I think what we're trying to discern from the hearing here and the testimony of people like yourself is whether or not the level of leasing is excessive. We have felt for a number of years that there was too much coal already leased and that some of it was speculative. We don't have to dwell on whether that's right or wrong at this time. The question now is whether the amount of coal that is under lease and still not developed, is too much more to add to the volume of coal pending development. We're not arguing whether it's better to make sure there's plenty available to allow an operator to get into the business of producing coal, if that's truly going to happen. What we are wondering however, is whether the market demand hasn't been vastly overestimated, and, therefore, that there won't be much development following another rather large lease. I don't believe we would be contemplating this large a lease sale if there hadn't been a moratorium for a number of years.

Mr. FORD. I agree.

Senator MELCHER. With the end of the moratorium, we find that what was first projected by the coal team for the Powder River basin—about a billion and a half tons, has been upped to a little over 2 billion tons. I recall when the vice president of Burlington Northern called me up right after New Year's Day. I think it was in 1979 or 1980. He said, "John, I want you to know we've got 5,000 coal cars waiting to be filled, and we've got 200 or 300 locomotives waiting to haul these unit trains, and there's nothing moving." It was real soft demand. I believe the Western Energy Co., at that time, wasn't delivering on their contracts to one of the utility firms. The demand is a little more reliable right now, but it is not a real firm demand. You people operate all over the United States right?

Mr. FORD. Very definitely.

Senator MELCHER. Is the demand pretty firm now?

Mr. FORD. It's increasing, and we see a very strong increased demand in coal.

Senator MELCHER. I shouldn't be very critical because everybody's estimates could be wrong, but I well recall the estimates in the middle 1970's, in fact, from about 1974 on. that we were going to be rapidly at the level of a billion tons per year, coal to production, and that surely by 1980 we'd be at about a billion and a half tons or close to it. In retrospect, those estimates were haywire. Now we've had this estimate Mr. Richards spoke of, beginning in 1980, by the Department of Energy that we're going to need a great deal more coal.

The Government estimates have been notoriously wrong on the upside. I don't think that's been true of your company or the rest of the people that are in the business, but what is your estimate for 1990 demand totally for coal?

Mr. FORD. I cannot speak for our marketing division. I have not been in contact with them, and direct contact with them, for the 1990 sale. We do feel that there is going to be a specific market availed for specific types of coal, and, of course, our company is zeroing in on those types of coals to acquire. We, Consolidation Coal Co., have no

plans to participate in the 1982 Powder River basin lease sale. Our partner at the Otter Creek project, Chevron Resources, will be doing some bidding on that property.

Senator MELCHER. In 1982?

Mr. FORD. In 1982, yes. I believe mostly that that is surrounding toward the synfuels type of product.

Senator MELCHER. Which may or may not come in?

Mr. FORD. Which may or may not come in. This is, again, a gamble that we are taking, that if we do have a shortfall in petroleum imports, that synfuels will become very strong, and if that's the case, we want to be prepared to handle that when it comes. It takes many years to prepare, after a lease is acquired, to prepare for a mine application, as can be seen when Don was up here a few minutes ago, at Decker. They"ve been trying to get a mine permit on the North Decker property since I worked for that property, and I left back in 1975, and they still do not have a mine permit on that property.

Senator MELCHER. I understand that, and as I stated at the outset of this hearing, I'm really interested in these maintenance leases or emergency leases because I think they're the ones that are essential for the ongoing operation of the mine, and they're more likely, in almost all cases, to be developed.

What does your company plan to do with the noncompetitive lease——

Mr. FORD. Well, the CX Ranch?

Senator MELCHER [continuing]. That's in conjunction with the Northern Cheyenne?

Mr. FORD. All right. We have applied for a mine permit, December 14, for a mine application with the State of Montana for our presently held leases at the CX Ranch in Montana. According to State law in Montana, it's the only State that has this law, you cannot apply for a lease or a mine application unless you have the whole area under control. So we have applied for it on our existing leases. We will be adding approximately, Consolidation Coal Co., and Chevron, which is this joint venture project, will be adding approximately 260 million tons to this, and it will expand. We will put in an amendment to the present application after we acquire these leases. At the present time, we hope to have the application approved sometime in 19—in the latter part of 1983 or 1984 and begin construction of the mine after that time, hopefully to be into initial production in the year 1985 or 1986, reaching full production of 8 million a year sometime around the timeframe of 1988 or 1989.

Senator MELCHER. What would be the annual production?

Mr. FORD. Eight million tons a year, with the possibility of increasing to 10.

Senator MELCHER. OK. Thank you very much, Rod.

Steve Elliot, WESCO Resources.

STATEMENT OF STEVE ELLIOT, VICE PRESIDENT, WESCO RESOURCES, INC., BILLINGS, MONT.

Mr. ELLIOT. Senator Melcher, it is indeed an honor and a privilege to appear here today before your committee to review the proposed upcoming Powder River coal lease sale scheduled for potentially some-

time in late April. We commend you and the committee for this most timely oversight hearing.

For the record, my name is Steve Elliot. I am the vice president of WESCO Resources, a Billings-based natural resources development firm.

Let me state at the outset that WESCO's position as far as the upcoming lease sale is concerned, we very much support the concept of the sale and think that they ought to take place, and especially in Montana.

I'm not really here today to compare what's happening between Montana and Wyoming, but I would like to give you a little bit of the history from what I can determine has happened in the State of Montana as far as Federal coal lease sales which have taken place. I have given to your committee a copy of the present lease status in the State of Montana [See exhibit 2]. I picked this up at the Bureau of Land Management on Friday of last week, so I have to assume that it is the most current information that's available.

I have summarized a little bit as to what I think can be concluded from looking at the schedule that you may have before you there. Montana has 22 issued leases, one of which is being relinquished. I believe it's a small lease up in the Great Falls area that basically has to do with a cabin, from what I understand. That covers 37,303.7 acres. I'm under the impression that the leases overlie about 1.4 billion tons of coal reserves, and if you notice here the last nonbypass or mine expansion type Federal lease was issued in 1971, that to Peabody Coal Company. In excess of 95 percent of the Federal coal was leased previous, therefore, to 1971, and most of these leases occurred in the mid-1960's.

Montana's major coal producers, with the exception of Westmoreland, which, as you know, mines Indian coal or State coal, are holding the Federal leases by production, and this includes the major mine operation, State of Montana, the Knife River mine, Peabody's mine, Decker operations, Spring Creek, and Western Energy. Consolidation Coal and Shell, from what I understand, are both attempting to mine coal where Federal leases have been issued.

In essence, but for the 1,662.58 acres of mine expansion or bypass type leases, Federal coal sales have been absent for nearly two decades. The only exception, again, to that is the Decker lease or the Peabody lease in 1971.

And I think the other thing that is key here is that we also have to look at the ownership patterns that exist. When you look at Montana, the Federal Government owns the coal under about 58 percent of the land, and in the State of Wyoming I believe that figure is 82 percent. The difference is in Montana we have Indian type ownership, we have railroad type ownership in the Powder River basin.

With these facts in mind, WESCO Resources believes that the upcoming Federal coal sale is both timely and necessary. Montana coal producers have been and are utilizing the issued Federal coal leases. Because of the coal ownership of the Federal Government, with very few exceptions, an economic mining operation cannot be assembled with the absence of Federal coal. I don't think this is good. If you continue a moratorium type thing, I don't think it's good for folks that are trying to enter the coal business, and I think it's anticompetitive.

WESCO, as you know, Senator, has been active in two major coal mining projects in the State of Montana. One of those is the MONTCO situation, and the other one has been the formation of the Tongue River Railroad Company, which has been formed to try to link the Tongue River basin and coal basin with transportation that would come to Miles City, Montana. The absence of Federal coal leases very well could thwart the development of the railroad. As has been stated here already, Federal coal has nothing to do with the mining operation.

I might just say as a sidelight that one of the reasons that the Montco operation exists today is because it was one of the few areas in the Powder River Basin where you could go and assemble enough contiguous non-Federal coal reserves to justify a mining operation.

As I said at the outset, I really wasn't here to try to make a comparison between what's happened in Montana and Wyoming, but I think it's significant to note that Wyoming has had at least four times as many Federal coal leases issued than the State of Montana, and if you look at their production figures, at least for 1981, they mine about three times the amount of coal that we do. So I think there is a correlation between the amount of Federal coal that is leased and the amount of coal that can be produced.

And I might just say, too, that from our standpoint, we look at the importance of Federal coal being leased because you might say we're trying to compete with folks that already own Federal leases. Some people seem to determine that to be speculation, but I might just add that we've been working on projects since 1973. We still are actively trying to get those things developed.

Senator, as you know, one of those areas is the Cook Mountain area. It's probably no secret that that area probably has better mining economics than Montco, but whether or not that's going to take place or not depends a great deal on whether or not the coal that's scheduled for lease in that area is, in fact, leased, and from what I understand, in the December 28, I think it is, 1981 Federal Register, under the preferred alternative other than the bypass-type leases that you've been talking about, there's really only three tracts that are in the preferred alternative. Those are the Cook, the Cook Mountain tract, Northwest Otter Creek, and the small business tract called Coal Creek. And adding up the figures of the indicated reserves according to USGS, these three tracts will only amount of 377 million tons, and I don't think that's an ordinate amount of coal to be leased at this time.

Thank you for the opportunity to appear today, and I would attempt to answer any questions you may have.

[Table submitted by Mr. Elliot follows:]

Steve Elliott

MONTANA STATE OFFICE
BUREAU OF LAND MANAGEMENT
BILLINGS, MONTANA

COAL LEASES - MONTANA

March 1, 1981

	Serial No.	Name of Lessee	Date of Lease	Description	Acres	Method of Bidding	No. Bidders	Bonus Per Acre	Rental and Royalty Terms	Adjusted Rental and Royalty Terms	Cumulative Production through September 30, 1980	Cumulative Royalty
PRODUCER	BILLINGS 020680- MONTANA 038770 (Pref. Right & Competitive)	Western Energy Company 40 E. Broadway Butte, MT 59701	5/5/23	T 1 N, R 41 E, P.M.M. Sec 2: Lots 1,2, S½NE¼, NE¼SE¼ Sec 4: Lots 1,2,3,4, S½N½, S½ Sec 12: NE¼, E½SW¼, W½SE¼ T 2 N, R 41 E, P.M.M. Sec 34: SE¼SE¼ T 1 N, R 42 E, P.M.M. Sec 12: Lots 2,3, SE¼NW¼, NE¼SW¼ Rosebud County Modification 7/11/75 T 1 N, R 41 E, P.M.M. Sec 12: That portion of the following-described lands lying E of Hiway #315: S½SE¼NE¼SW¼, S½NE¼SW¼, SE¼SW¼NW¼, SE¼NW¼, NE¼NW¼SW¼ Rosebud County	1,446.35 Private Surface All	--- Offered at public auction to party offering highest bonus; if no bonus offered lease awarded to applicant	--- 0 Lease awarded to applicant	--- 0	1/ 10¢/ton 1/ 10¢/ton	Consolidation: 4/30/68 Rent: 25¢/a. for 1st yr.; thereafter $1/a. per yr. Adjustment Rent: no change Royalty: 10¢/ton 1st 5 yrs., 12½¢/ton 2nd 5 yrs.; 15¢/ton next 10 yrs. Modification 7/11/75 Rent: No change Royalty: 8% of gross value, not less than 35¢/ton	35,285,166 Tons	$4,398,265
	BILLINGS 048531 (Competitive)	Glenn H. & Alice Johnson 709 1st St. E. Roundup, MT 59072	3/3/28	T 7 N, R 26 E, P.M.M. Sec 4: SE¼SW¼, SW¼SE¼ Musselshell County	80.00 Private Surface All	Not Specified	None-Lease awarded to Petitioner	-	1/ 15¢/ton - 20 yrs.	Mod. 40.00 a. No change-terms ADJ. 17½¢/ton 10 yrs.; 20¢/ton 2nd 10 yrs.	149,477 tons (Not presently producing)	$ 22,490
	GREAT FALLS 082573 (Pref. Right)	Adolph, Thomas & Robert Bugni 125 N. Excelsior St. Butte, MT 59701	6/6/42	T 11 S, R 3 W, P.M.M. Sec 28: W½NE¼, S½NE¼ Madison County	80.00 Federal Surface All	---	---	---	1/ 15¢/ton - 20 yrs.	Adjustment Rent: no change Royalty: to minimum $1/a.	736 tons (Not presently producing)	$ 110
	MONTANA 06770 (Competitive)	Catherine L. & William Craig Kukuchka P.O Box 8288 Sheridan, WY 82801	1/1/54	T 8 S, R 40 E, P.M.M. Sec 33: SE¼NE¼ Big Horn County	40.00 Private Surface All	Sealed Only	1	$1.00	1/ 15¢/ton - 20 yrs. Adjustment 1/1/79 Rent: $3/a. Roy.: 12.5%	N/A	15,944 tons (Not presently producing)	$ 2,383
PRODUCER	MONTANA 023207 (Competitive)	Knife River Coal Mining Co. 1515 N. Kavaney Drive Bismarck, ND 58501	3/1/57	T 20 N, R 57 E, P.M.M. Sec 22: ~~SW¼, SW¼~~ Sec 28: All Richland County	~~960.00~~ Private Surface All	Sealed Only	1	$1.00	1/ 10¢/ton - 20 yrs.	Adjustment 11/1/79 Rent: $3/A Royalty: 12½%/ton	1,704,570 tons	$ 320,417
PRODUCER	MONTANA 052647 (Competitive)	Divide Coal Mining Company P. O. Box 342 Roundup, MT 59072	11/1/62	T 6 N, R 26 E, P.M.M. Sec 24: W½SW¼ Musselshell County	80.00 Private Surface All	Sealed Only	1	$1.00	1/ 15¢/ton - 20 yrs.	N/A	178,998 tons	$ 26,801
	MONTANA 057934 (Competitive)	Western Minerals, Inc. & Wytana, Inc. d/b/a Decker Coal Company P. O. Box 746 Sheridan, WY 82801	10/1/63	T 9 S, R 40 E, P.M.M. Sec 3: S½N½, SW¼ Sec 4: S½NE¼, SE¼ Sec 9: N½E¼ Sec 10: N½N½ Big Horn County	720.00 Federal Surface 160.00 Private Surface 560.00	Sealed Only	1	$1,015 2560.55 a.	1/ 10¢/ton 1st 5 yrs.; 12½¢/ton 2nd 5 yrs.; & 15¢/ton next 10 yrs.	N/A	-0-	$ -0-

1/ Standard Rental Rate: 25¢/a. 1st yr.; 50¢/a. 2nd thru 5th yrs.; & $1/a. 6th and succeeding yrs.

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	Serial No.	Name of Lessee	Date of Lease	Description	Acres	Method of Bidding	No. Bidders	Bonus Per Acre	Rental and Royalty Terms	Adjusted Rental and Royalty Terms	Cumulative / Production (Through September 30, 1980)	Cumulative Royalty (Through September 30, 1980)
PRODUCER	MONTANA 057934-A (Competitive)	Western Minerals, Inc. & Wyoma, Inc. d/b/a Decker Coal Company P. O. Box 746 Sheridan, WY 82801	10/1/63	T 9 S, R 40 E, P.M.M. Sec 3: Lots 3,4 Sec 4: Lots 1,2 Sec 9: S½NE¼, SE¼ Sec 10: S½N½, S½ Sec 15: W½ Sec 21: E½ Sec 22: W½ Big Horn County	1,040.55 Private Surface All	SEE MONTANA 057934 FOR SALE INFORMATION				N/A	20,836,017 tons	$3,094,653
PRODUCER	MONTANA 061685 (Competitive)	Western Minerals, Inc. & Wyoma, Inc. d/b/a Decker Coal Company P. O. Box 746 Sheridan, WY 82801	3/1/64	T 8 S, R 40 E, P.M.M. Sec 32: N½, SE¼ Sec 33: W½NW¼, NE¼NW¼, NW¼SW¼, S½SW¼, E½ T 9 S, R 40 E, P.M.M. Sec 4: Lot 3, SE¼NW¼, SW¼ Sec 8: SE¼SE¼ Sec 9: E½NW¼, SW¼ Sec 17: N½, SE¼ Sec 21: W½ Big Horn County	2,360.20 Federal Surface 40.00 Private Surface 2,320.20	Sealed followed by oral bids (no oral bids received)	1	$1.00 2,320 a.	1/ 10¢/ton 1st 5 yrs.; 12½¢/ton 2nd 5 yrs.; 15¢/ton last 10 yrs.	Modification 40.00 a. Rental: 25¢/a. 1st yr. Thereafter same as 1se; 17½¢/ton to 3/1/72; 20¢/ton thereafter.	9,939,182 tons	$1,535,503
	MONTANA 061686 (Competitive)	Peter Kiewit Sons' Co. 1000 Kiewit Plaza Omaha, NE 68131	3/1/64	T 9 S, R 39 E, P.M.M. Sec 24: Lot 1, N½ & E½SE¼ of Lot 2, SW¼NE¼, NE¼NW¼, NE¼W½NW¼ T 9 S, R 40 E, P.M.M. Sec 19: Lot 3, E½SW¼, SE¼ Sec 20: SW¼SW¼ Sec 29: NE¼SW¼, NE¼NW¼SW¼ Big Horn County	523.76 Private Surface All	Sealed followed by oral (no oral bids received)	1	$1.00	1/ 10¢/ton 1st 5 yrs.; 12½¢/ton 2nd 5 yrs. 15¢/ton last 10 yrs.	N/A	-0-	$ -0-
	MONTANA 065782 (Competitive)	Spring Creek Coal Co. 111 S.W. Columbia Portland, OR 97204	7/1/65	Tract 1 T 8 S, R 39 E, P.M.M. Sec 22: SE¼SW¼, E½SE¼, SW½SE¼ Sec 23: S½NE¼, S½ Sec 24: SW¼NW¼, SW¼, W½SE¼, SE¼SE¼ Sec 25: E½, E½W½, W½NW¼, NW¼SW¼ Sec 26: N½, NE¼SE¼ Sec 27: N½NE¼, NE¼NW¼ T 8 S, R 40 E, P.M.M. Sec 30: Lots 1,2,3,4, E½NW¼, SE¼SW¼ Sec 31: N½NE¼, NE¼NW¼ Tract 2 T 8 S, R 40 E, P.M.M. Sec 19: S½ of Lot 4 Big Horn County	2,365.015 Federal Surface 730.66 Private Surface 2,128.355	Sealed Only	1	$1.01 2503.27 a.	1/ 17½¢/ton 1st 10 yrs.; 20¢/ton 2nd 10 yrs.	Modification Acres only No change-term	-0-	$ -0-
	Modification 8/1/80							$25.00 (Mod. 8/80)		Modification 8/1/80 Rental: $1/a. Royalty: (Tr. 2) 12½%/ton Royalty: (Tr. 1) Same as orig. lease.		

1/ Standard Rental Rate: 25¢/a. 1st Yr.; 50¢/a. 2nd thru 5th yrs.; & $1/a. 6th and succeeding yrs.

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COAL LEASES - MONTANA

Serial No.	Name / Address	Date of Lease	Description	Acres	Method of Bidding	No. Bidders	Bonus Per Acre	Rental and Royalty Terms	Adjusted Rental and Royalty Terms	Through September 30, 1980 Cumulative / Production	Through September 30, 1980 Cumulative Royalty
MONTANA 060945 (Competitive)	Shell Oil Company Two Shell Plaza P. O. Box 2099 Houston, TX 77001	7/1/65	T 9 S, R 38 E, P.M.M. Sec 36: Lot 8, NE¼SE¼, S½SE¼ T 10 S, R 38 E, P.M.M. Sec 1: Lot 1, N½NE¼ T 9 S, R 39 E, P.M.M. Sec 32: Lots 6, 7, N½SE¼ Sec 33: Lots 1, 2, N½SW¼ Big Horn County	540.86 Federal Surface 158.90 Private Surface 381.96	Sealed Only	1 (2 bids by same offeror)	$3.60 692.66 A	1/ 17½¢/ton 1st 10 yrs.; 20¢/ton 2nd 10 yrs.	N/A	-0-	$ -0-
MONTANA 073093 (Competitive)	Western Minerals, Inc. & Wytana Inc. d/b/a Decker Coal Company P. O. Box 746 Sheridan, WY 82801	8/1/66	T 9 S, R 40 E, P.M.M. Sec 1: Lots 1,3,4, SE¼NE¼, S½NW¼, SW¼, E½SE¼ Sec 13: All Sec 14: S½NE¼, E½SW¼, SE¼ T 8 S, R 41 E, P.M.M. Sec 31: Lots 3,4, E½SW¼, SE¼ Sec 32: S½ Sec 33: S½ Sec 34: SW¼, W½SE¼ T 9 S, R 41 E, P.M.M. Sec 3: Lots 5,6,7,8, S½N½, S½ Sec 4: Lots 5,6,7,8, S½N½, S½ Sec 5: Lots 5,6,7,8, S½N½, S½ Sec 6: Lots 6,7,8,9,10,11, 12, S½NE¼, SE¼NW¼, E½SW¼, SE¼ Sec 7: Lots 5,6,7,8, E½, E½W½ Sec 8: All Sec 9: N½, SW¼, N½SE¼, SW¼SE¼ Sec 10: N½, N½SW¼, SE¼SW¼, SE¼ Sec 15: All Sec 17: All Sec 18: Lots 5,6,7,8, E½, E½W½ Big Horn County	9,409.56 Federal Surface 269.61 Private Surface 9,139.95	Sealed followed by oral bids	3	$18.25	1/ 17½¢/ton 1st 10 yrs.; 20¢/ton 2nd 10 yrs.	N/A	2,590,408 tons	$ $18,081

1/ Standard Rental Rate: 25¢/a. 1st yr.; 50¢/a. 2nd thru 5th yrs.; & $1/a. 6th and succeeding yrs.

March 1, 1981

Serial No.	Name of Lessee	Date of Lease	Description	Acres	Method of Bidding	No. Bidders	Bonus Per Acre	Rental and Royalty Terms	Adjusted Rental and Royalty Terms	Through September 30, 1980 Cumulative / Production	Cumulative Royalty
MONTANA 073109 (Competitive)	Western Energy Company 40 E. Broadway Butte, MT 59701	9/1/80	T 1 N, R 39 E, P.M.M. Sec 2: Lots 1,2,3,4, S½NE¼ T 1 N, R 40 E, P.M.M. Sec 2: Lots 1,2,3,4, S½N½, S½ Sec 10: E½, E½SW¼, SW¼SW¼ Sec 12: Lot 4, S½SW¼, SW¼SE¼ Sec 14: W½ T 1 N, R 41 E, P.M.M. Sec 6: Lots 6,7, E½SW¼, SE¼ Sec 8: W½, SW¼ Sec 18: Lot 1, NE¼, NE¼NW¼ T 2 N, R 38 E, P.M.M. Sec 12: S½NW¼, SW¼, SW¼SE¼ Sec 24: All T 2 N, R 39 E, P.M.M. Sec 28: S½SW¼ Sec 30: All Sec 32: NE¼, N½NW¼, SE¼NW¼ Sec 34: E½, E½W½, W½W¼ T 2 N, R 40 E, P.M.M. Sec 20: S½SE¼ Sec 25: W½ Rosebud County - 4,072.10 a. Treasure County - 320.00 a.	5,792.10 Federal Surface 40.00 Private Surface 5,752.10	Sealed bids followed by oral bids - no oral bids received	1	$1.05	1/ 17½¢/ton 1st 10 yrs.; 20¢/ton 2nd 10 yrs.	N/A	-0-	-0-
M 3831 (Competitive)	U. S. Steel Corporation Rm. 2215, 600 Grant St. Pittsburgh, PA 15230	12/1/67	T 19 N, R 55 E, P.M.M. Sec 12: W½W½ Sec 14: All T 19 N, R 56 E, P.M.M. Sec 6: Lots 5,6,7, S½NE¼, SE¼NW¼, E½SW¼, SE¼ Sec 18: Lots 1,2,3,4, E½, E½W½ Sec 20: All Dawson County	2,537.14 Private Surface All	Sealed only	2	$100.11	1/ 15¢/ton 1st 10 yrs.; 17½¢/ton 2nd 10 yrs.	N/A	-0-	-0-
M 3832 (Competitive)	U. S. Steel Corporation Rm. 2215, 600 Grant St. Pittsburgh, PA 15230	12/1/67	T 19 N, R 55 E, P.M.M. Sec 2: Lots 1,2,3,4, S½N½, S½ Sec 4: Lots 1,2,3,4, S½N½, S½ T 20 N, R 55 E, P.M.M. Sec 26: All Sec 34: All Dawson County	2,559.04 Private Surface All	Sealed only	2	$100.11	1/ 15¢/ton 1st 10 yrs.; 17½¢/ton 2nd 10 yrs.	N/A	-0-	-0-

1/ Standard Rental Rates: 25¢/a. 1st Yr.; 50¢/a. 2nd thru 5th yrs.; & $1/a. 6th and succeeding yrs.

March 1, 1981

	Serial No.	Name of Lessee	Date of Lease	Description	Acres	Method of Bidding	No. Bidders	Bonus Per Acre	Rental and Royalty Terms	Adjusted Rental and Royalty Terms	Through September 30, 1980 Cumulative / Production	Through September 30, 1980 Cumulative Royalty
PRODUCER	M 15965 (Competitive)	Peabody Coal Company 301 N. Memorial Drive St. Louis, MO 63102	6/1/71	T. 1 N., R 40 E., P.M.M. Sec. 24: Lots 1,2,3,4, W½E½, W½ Sec. 25: Lot 1, W½NE¼, N½NW¼ T. 1 N., R. 41 E., P.M.M. Sec. 18: S½NE¼, SE¼ Sec. 22: All Sec. 28: W½NE¼, S½NW¼, SW¼, S½SE¼ Sec. 30: Lots 1,2,3,4, E½, E½W½ Sec. 32: All T. 1 S., R. 41 E., P.M.M. Sec. 4: Lot 2, SW¼NE¼, SW¼NW¼, SE¼ Sec. 6: Lots 1,2, S½NE¼, SE¼ Rosebud County	4,306.55 Federal Surface 320.00 Private Surface 3,986.55	Sealed followed by oral (no sealed bids received)	3	$56.00	Rent: $1/a. 1st 5 yrs.; $5/a. thereafter Royalty: 12½¢/ton 1st 10 yrs.; 20¢/ton 2nd 10 yrs.	N/A	12,864,482	$2,251,281
	M 44191 (Competitive)	Western Energy Company 40 East Broadway Butte, MT 59701	6/1/80	T. 1 N., R. 41 E., P.M.M. Sec. 6: Lot 5, S½SE¼NW¼ Rosebud County	61.23 Private Surface All	Sealed only	1	$25.00	Rent: $3/a. Royalty: 12.5%			
	M 44392 Sale Lease MONTANA 06686	Consolidation Coal Company Conoco Plaza Pittsburgh, PA 15241	3/1/80 Assignment Approved 5/1/80	T. 9 S., R. 35 E., P.M.M. Sec. 24: SW¼ and W½SE¼ of Lot 2 Lots 1,2,3, SW¼NE¼, W½NW¼, S½NW¼, SW¼, W½SE¼ T. 9 S., R. 40 E., P.M.M. Sec. 29: W½NW¼SW¼, S½W½SW¼, SW¼SE¼ Sec. 30: Lot 2, E½SE¼ Big Horn County	674.40 Private Surface All		See MONTANA 06168	6 for Sale Information			
	M 35731 (Competitive)	Western Energy Company 40 East Broadway Butte, MT 59701	8/1/79	T. 1 N., R. 41 E., P.M.M. Sec. 2: Lots 3,4, S½NW¼, SW¼, W½SE¼, SE¼SE¼ Rosebud County	466.95 Private Surface All	Sealed only	1	$25.00	Rental: $3/a. Royalty: 2½% - not less than $1.48/ton			
	M 35734 (Competitive)	Western Energy Company 40 East Broadway Butte, MT 59701	8/1/79	T. 1 N., R. 41 E., P.M.M. Sec. 10: W½, W½E½ Rosebud County	480.00 Private Surface All	Sealed only	1	$25.00	Rental: $3/a. Royalty: 2½% - Not less than $1.47/ton			
	Totals	21 Leases		T. 9 S., R. 40 E., P.M.M. Sec. 8: SE¼NE¼, N½SE¼, SE¼SE¼ Sec. 9: W½W½ Sec. 17: E½SW¼ Sec. 20: N½NE¼, SE¼NE¼ Big Horn County	37,303.705 acres 640.00	Sealed only	1	$25.00	Rental $3/acre Royalty 12½%			

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Senator MELCHER. All right. I understand your point now. You said that the scheduled lease sale for the Montana portion of the Powder River sale involves a total of 377 million tons if you exclude the maintenance tracts?

Mr. ELLIOT. Right.

Senator MELCHER. What's the estimate of the coal involved in the Cook Mountain tract?

Mr. ELLIOT. I think 177 million tons in Cook Mountain. I believe the Coal Creek tract is scheduled for 60 million tons, and the Northwest Otter Creek, plus or minus a few tons, I think it is, what, 130 million tons?

Senator MELCHER. Yes. That would add up to 367 million tons.

I'm not actually questioning how long the moratorium should have been in place. I think the moratorium itself creates a reaction. The mining company thinks, "Well, we got caught once in a moratorium. We may have another one or something; better get plenty up for lease now." I'm well aware that some of these maintenance or emergency tracts have been difficult to get cleared without having to lay off some people as Western Energy Co. had to do on two separate occasions. But this railroad isn't a certainty yet, is it?

Mr. ELLIOT. Sure as heck isn't. Obviously the problem that we have with the railroad, part of it, I think, emanates out of the position the State of Montana took. One of those things is that it wasn't going to be the boilerroom for the rest of the Nation, and when it came time to other kinds of transportation systems such as slurry pipelines, seems to me that the water is the lifeblood of the ranching and farming community, and that becomes, of course, a political issue, and we do have a statute on the books that says water for slurry pipelines is not a beneficial use.

Again, if you're going to develop the coal in the Tongue River basin, seems to me you only have one choice, and that's the construction of a railroad, and we knew that when we got into the railroad business, not that that's one that we lined up to get into, Senator, but when we did that, that it was probably going to be dependent on more than just the Montco mine. But be that as it may, if you're going out to market that coal, it's a little difficult to do that if you can't deliver the product. So that's the birth of the Tongue River Railroad, and, of course, the opening of the Montco mine and hopefully the certification to construct the railroad go hand in hand.

And there are other folks in the immediate area, the Ashland area, you might say, that are equally interested in trying to see coal developed in that area, and the makeup of the Tongue River Railroad is not just my company alone. There are subsidiaries of Consolidation Coal, Diamond Shamrock, and ourselves, and Washington Energy Co. I might say that City Service has an interest in the area. Of course, during the coal team meetings and that sort of thing, they have said that they would not like to see the coal put up as far as their tracts are concerned or their interest is concerned until 1986 or 1987. I believe that's Southwest Otter Creek. So there are a number of other companies that have been working for a great deal of time to also try to see that coal developed, and I think the viability of the railroad is going to depend on at least one other mine opening up.

Senator MELCHER. What are the ranges of those mines? What specifically are those proposals?

Mr. ELLIOT. Well, I don't know exactly what City Service's plans are, but I know that when it comes time for Southwest Otter Creek, I'm sure that they would be considering a mine in that area. I can't—maybe Mr. Ford can speak to what Consol's plans are in terms of Northwest Otter Creek. Again, the Ashland-Decker-Birney area is one that has other folks that have interests in that area, but I, you know, Senator, I really can't speak to what their immediate plans are.

Senator MELCHER. Are either one of these Northern Cheyenne tradeoffs one of those?

[Mr. Elliot shaking head negatively.]

Senator MELCHER. One's Greenleaf?

Mr. ELLIOT. That would be the Peabody situation, I think.

Senator MELCHER. Peabody?

Mr. ELLIOT. And I think Mr. Ford said that their tradeoff was for the CX Ranch, which is considerably south.

Senator MELCHER. Yes. All right. Thank you very much, Steve.

Mr. ELLIOT. Thank you.

Senator MELCHER. Is Joseph Pressley here, Westmoreland Resources? Joseph Pressley, Westmoreland?

We do have a statement from the Montana Department of Lands, do we not? We'll make it part of the record at this point.

[The statement of Mr. Driear follows:]

11-565 0 ÷ 82 - 6

TESTIMONY OF MR. RALPH DRIEAR, ENVIRONMENTAL ADMINISTRATOR
MONTANA DEPARTMENT OF STATE LANDS
BEFORE THE SENATE COMMITTEE ON ENERGY AND NATURAL RESOURCES
REGARDING THE PROPOSED 1982 POWDER RIVER COAL LEASE SALE
PRESENTED ON FEBRUARY 22, 1982
YELLOWSTONE COUNTY COURTHOUSE, BILLINGS, MONTANA

Members of the committee, wish to thank the Committee for extending to the Montana Department of State Lands the opportunity to present testimony regarding the proposed 1982 Powder River Coal Lease Sale. Commissioner Gareth Moon extends his apologies to the Committee, as prior commitments have prevented his attendance at today's hearings. My name is Ralph Driear, and I am the Environmental Administrator for the Department of State Lands and the State Coordinator for the Governor's Representative on the Powder River Regional Coal Team. Commissioner Moon has asked that I appear before this Committee today and present the following testimony.

The Montana Department of State Lands is vitally involved in the management of Montana's coal resources through the implementation of the Surface Mining Control and Reclamation Act of 1977, and the management of the State's school trust lands and the coal resources that lie beneath them. The State of Montana has eagerly embraced the concept of partnership management for the federal coal resources in Montana as exemplified by the State's endorsement of the regional coal teams. Montana has consistently sought a meaningful voice and role in the decisions regarding the management of federal coal resources within the State. There can be little doubt that Montana has much at stake in the Federal Coal Leasing Program. Significant amounts of State owned coal are located within, or adjacent to the tracts of federally owned coal being proposed for future leasing. In addition to the impact upon State owned coal resources, Montana is very cognizant of the potential impacts to its citizens and local governments that additional coal development could bring. For this reason, Montana has sought a phased approach to the proposed

future leasing of fereral coal in the Powder River Coal Region. After careful consideration of the possible consequences of additioanl coal leasing, and participation in the process of developing the characteristics of future coal leasing through the State's role in the Powder River Regional Team, Montana has recommended to the Department of Interior the following leasing sale schedule for Montana tracts:

April 28, 1982, Coal Lease Sale

1. Offer the Colstrip A & B, Colstrip C, Colstrip D, Spring Creek, North Decker, and West Decker Tracts as maintenance tracts.
2. Offer the Coal Creek Tract as a small business set aside.
3. Offer the Northwest Otter Creek and Cook Mountain Tracts as competitive tracts or offer the two plus Southwest Otter Creek and the Ashland (Decker-Birney) Tracts using the sale procedure called Intertract Bidding. However, only the two tracts receiving the highest per ton bids would be leased.
4. Offer any tracts not successfully sold in the scheduled sale in future sales.

Thank you.

Senator MELCHER. Mr. Richards, Cannon, you're still here. I do have a couple of questions.

Cannon, we heard Montco's intentions of fulfilling a 12-million-ton production level by perhaps 1986; Consolidated, from the CX, probably would have perhaps 8 to 10 million tons by 1986 or 1987. Combined production amounts to 20 million tons. We've heard that 186 million tons of ongoing operation is already contracted. Now we're already up to 206 million tons of coal without an additional lease sale. I'd also like to note that we're not figuring in the Shell/Crow sale that's going to go on line or the amount of coal that's privately owned, Burlington or otherwise. Isn't the justification for this amount of sale, 2 billion tons of Federal coal, a little bit high?

Mr. RICHARDS. Well, that's subjective, Senator. Again, outside of the maintenance tracts, we are not talking about much of Montana.

Senator MELCHER. All right. Then let's address that. The point was made whether or not the maintenance tracts such as Western's right there, whether the due diligence development requirement would apply directly to those maintenance tracts; in other words, 1 percent would be mined within 10 years. Do they apply?

Mr. WEBB. Do you want me to answer that?

Mr. RICHARDS. Yes.

Senator MELCHER. Yes.

Mr. WEBB. I think perhaps I could help on that.

The figures that apply are to logical mining units.

Senator MELCHER. All right. So that answers that. If you look at A and B or C or D as a logical mining unit, then 1 percent of any of it——

Mr. WEBB. Yes.

Senator MELCHER [continuing]. Complies with the law?

Mr. WEBB. Correct, as long as it's in a logical mining unit controlled by the operator.

Senator MELCHER. Well, we're really tying up a lot of coal, then, that isn't going to be mined within 10 years.

Mr. WEBB. I'd say we're talking about coal adjacent to existing mines, that's probably quite true. The purpose of it, of course, is to design a sequential mining operation that isn't always faced with these bypass situations and in this particular coal set, we've made an attempt both at Colstrip and at Decker and Spring Creek to identify those tracts most likely to be needed and put them at sale at one time rather than having over the years continual need for emergency or bypass circumstances show up.

Senator MELCHER. Well, we're looking here at a—that's quite a bit of coal right there, but it's less than 100 million tons.

Mr. WEBB. Yes.

Senator MELCHER. And that's the biggest part in Montana that is emergency or bypass?

Mr. WEBB. Yes. There's, in Colstrip A, B, and C and D, the three parcels that are there, it looks to me offhand like it would be, perhaps, 120 million tons, something on that order, of Federal coal.

Senator MELCHER. I think Mr. Neill told us it was 96 million tons, and we can add to that the Decker coal, what Kiewit people are talking about, and we're probably talking about another, what, 60 million emergency or maintenance?

Mr. WEBB. Yes, probably something on the order of 70 million tons in the North Decker and West Decker properties and another 35 million tons in the Spring Creek property.

Senator MELCHER. So that's about, roughly, 200 million, 200 million tons of maintenance or emergency-type coal——

Mr. WEBB. The likelihood——

Senator MELCHER [continuing]. Or bypass.

Mr. WEBB. Yes. The likelihood of that is that it would most likely be used to continue the longevity of the existing operation rather than bringing into production a new coal mine itself.

Senator MELCHER. And Steve Elliot just talked about 360 million tons, 377 million tons. That seems to add up to me to be about 577 million tons in Montana.

Mr. WEBB. Yes.

Senator MELCHER. And so does that mean that—is that the total, just about all that there is, then, in Montana that you're proposing?

Mr. RICHARDS. For this sale, yes.

Senator MELCHER. Yes.

Mr. RICHARDS. Out of the 2.1 billion, 574 million——

Senator MELCHER. Is Montana?

Mr. RICHARDS [continuing]. Is Montana, roughly a fourth of it.

Mr. WEBB. I think Mr. Elliot mentioned it correctly that outside of these maintenance tracts in Colstrip, Decker, and Spring Creek, the recommendations of the coal team were to lease three tracts, three new lease tracts in Montana, Cook Mountain, Coal Creek, and Northwest Otter Creek, with the Coal Creek tract being restricted to small business

Senator MELCHER. With the small business?

Mr. WEBB. Yes.

Senator MELCHER. Now how much of Wyoming coal, the other 1.5 billion tons, is maintenance tracts?

Mr. WEBB. I doubt that I have that figure. No, I don't have that figure in tract numbers outside of the maintenance tracts which I believe there are only two of. There are two small business set-aside tracts there, also, and three additional tracts that would be major sized tracts for new leasing, new mine development.

Senator MELCHER. Now if the goal is to set up somewhere around 300 million tons capability out of the Powder River basin per year, and when we think about this other that's not involved with the leases, it seems like—with the new leases, seems like we're already up to way over 200 million tons of the Powder River basin, and it seems to me that we're far—this is by 1990. Seems like we're getting way ahead of what the potential is.

Mr. WEBB. I believe the Office of Technology Assessment estimated 345 million tons, something like that, annual production capacity available from existing mines and projected mines in the Powder River by 1990, so you're correct. If their estimate is correct, why, that would be right.

Senator MELCHER. Their estimate points out that they think that's greatly overcapacity?

Mr. WEBB. Yes.

Senator MELCHER. And far outstrips the demand?

Mr. WEBB. Right.

Senator MELCHER. Do you know whether the Secretary has made an estimate of the demand?

Mr. WEBB. The recommended leasing target of 1.4 and 1.5 billion tons is what the Secretary brought off onto the coal team with the caution that there might be—that they ought to look at higher levels because there might be a greater need. The coal team did that and recommended a higher level as a result.

Senator MELCHER. Thank you both very much.

I want to take note that the hearing record will remain open for an additional 15 days for testimony from anyone who cares to submit it.

Subcommittee adjourned.

[Whereupon, the hearing was adjourned.]

APPENDIX

Additional Material Submitted for the Record

NORTHERN PLAINS RESOURCE COUNCIL

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April 30, 1981

John Melcher
United States Senate
Washington, D.C. 20510

Dear Senator Melcher:

We are writing to express concern about the setting of a coal leasing target in the Powder River Region. Because some of our concern arises from the general operation of the coal leasing process, this letter also applies to coal lease sales in regions other than the Powder River Basin.

At its March 10 meeting, the Powder River Regional Coal Team voted to recommend to the Secretary of Interior a Federal Coal Leasing Target of 1.1 - 1.2 billion tons for the 1982 Powder River Coal Lease Sale. Up to an additional 309 million tons of coal, in "maintenance tracts" adjacent to existing mines, may be offered for lease under this recommendation. This would not be included in the 1.1 - 1.2 billion ton figure.

We believe that this recommendation, and the Department of Energy's production goals and other assumptions on which the recommendation is based, are highly questionable. We believe that the process of setting coal leasing targets is, in practice, seriously flawed and divergent from the intent of Congress and the Federal Coal Management Program.

We understand that you would like to hold oversight hearings on this question. We heartily encourage you to do so. We would be happy to provide any information we can which might be useful to you. In addition, we would be glad to participate at any hearings which are held, should you desire our testimony. We have enclosed the comments of the Northern Plains Resource Council and the Powder River Basin Resource Council on the preliminary coal leasing target of 776 million tons. The Coal Team's recommendations to increase the target was made in spite of these comments. Also enclosed is a memorandum covering several areas of great concern to us on which an investigation might shed needed light.

Again, we will be glad to provide you with any further assistance. We greatly appreciate your interest in this matter.

Sincerely,

Helen Waller
NPRC, Chairman

Gerald W. Moravek
PRBRC, Chairman

Enclosures

MEMORANDUM Dated: 4/30/81

TO: John Melcher

FR: John Smillie, NPRC Staff
Patrick Sweeney, Staff Director

RE: Federal Coal Leasing

The attached material identifies several areas that the Administration and industry have targeted for review in either the Federal Coal Leasing Program or the Federal Surface Mining Act. The Department of Interior is presently on a two phase approach to rule changes. Several areas are up for immediate attention and others for review over the summer. As these become more identified for the public, we will provide you with an analysis.

The following review covers our concerns on the coal leasing targets.

1. The size of the recommended coal target in relation to the large number of existing leases and the existing and projected overcapacity in the area.

There are several billion tons of coal already under lease or subject to Preference Right Lease Applications in the Powder River region, which have not been developed. It is especially significant that several of the companies which have expressed interest in tracts being considered for the 1982 Powder River Regional Coal Lease Sale are among the largest holders of outstanding undeveloped Federal coal leases. Much of the Federal reserves held by these companies lie within the Powder River region.

The existence of a soft coal market and overcapacity in existing mines in the area is well established. Many observers predict that this overcapacity will continue throughout the next decade. The arguments made for a large coal lease sale have not challenged this. Instead, the justification generally made for a billion ton (or higher) coal lease target is that it will, somehow, foster greater [illegible] coal prices down. Since few coal producers new to the Powder River Region expressed an interest in leasing in the area, we find this argument hard to believe.

2. Whether the lessons of past abuses of Federal coal leasing have been forgotten.

Notwithstanding the lessons of history, the Department of Energy and other Federal agencies are now making the simplistic argument that "the adverse effects of overleasing are less than the dangers of underleasing". If this was in fact the case, there would have been no need for a moratorium on coal leasing in the first place. Previous coal leasing programs led to increased coal leasing and decreased coal production from Federal lands. The new Coal Management Program was developed primarily to correct this phenomenon. Advocacy of indiscriminate leasing by the

Departments of Energy and Interior shows a blatant disregard for the past abuses of Federal leasing program.

This is especially alarming in view of recent arguments advanced in regard to 'due diligence' requirements. One of the key provisions of the new coal leasing program, the due diligence requirements are intended to prevent the kinds of speculation with Federal coal resources which occurred under previous programs. The existence of the due diligence provisions is cited as a deterrent to future abuse by those who have advocated increasing the leasing target. Even if there is overleasing, the argument goes, due diligence requirements prevent speculation. "Let us take the risk," one coal industry spokeman pleaded at the March 10 meeting of the Powder River Coal Team.

We were therefore alarmed at the suggestion of a representative of the Department of Energy, at the same Coal Team meeting, that there might have to be some "flexibility" in the enforcement of due diligence.

As we noted above, demand for the region's coal is far exceeded by the productive capacity of existing mines, and this capacity is projected to continue into the future. If a lease sale of the size being contemplated is held, and coal is leased which cannot subsequently be mined because of the lack of demand, we believe that pressure would then

be exerted by successful bidders to relax or remove due diligence requirements.

3. The implications of the size of the coal lease target for competitive bidding.

A coal lease sale of 1.1 - 1.2 million tons will require a large number of tracts of coal to be leased. It therefore becomes highly improbable that serious competitive bidding for tracts will occur. In effect, there will be a tract for everyone who is interested in one. Most of the tracts being considered by the Coal Team received just one industry "expression of interest"; only a couple of tracts received two expressions of interest.

4. The Department of Energy's production goals, and the manner in which those goals are used to set a coal leasing target.

The Powder River Regional Coal Team set a leasing target based on DOE's highest projection for future coal demand. DOE's goals are out of line, exceeding estimates of the National Coal Association and other groups. Among other things, DOE's 1990 production goals are based on levels of synfuels development and steam coal export which are, quite simply, physically unattainable and which far exceed the most optimistic coal industry forecasts. (For additional criticism of DOE's goals please refer to the attached copy(ies) of NPRC's (and

PRBRC's) comments on the preliminary lease target).

There has been no justification, to date, for leasing to meet DOE's "high" projections, as opposed to the medium or low projections. The high projection has, apparently, been picked arbitrarily as a basis for a coal lease target.

5. The role of Federal agencies in Washington, D.C. in influencing the recommendation of the Coal Team.

The March 10 meeting of the Powder River Regional Coal Team was preceeded by much advance speculation, in coal industry trade publications and elsewhere, concerning a possible Coal Team recommendation to greatly increase the preliminary lease target. Not only the Department of Energy and several Interior Department agencies, but also the Department of Justice, the Council on Wage and Price Stability, and others inside and outside of government, recommended an increased figure. Generally, the arguments presented were based on the need to increase competition, and totally ignored the question of whether or not significant new entries into Powder River Basin coal production would, or could, actually result from a large coal lease sale. Nonetheless, the frequency and variety of the pronouncements undoubtedly increased the pressure on the Coal Team to increase the lease target recommendation substantially.

Furthermore, it is likely that these agencies and the coal companies interested in Powder River coal leases will now attempt to persuade Secretary Watt to adopt a final coal lease target that is even higher than the Coal Team's recommendation.

Leasing to meet DOE's "high" production goals will guarantee overleasing in the Powder River Basin, on a large scale. The result will be tremendous pressure to relax or eliminate the 'due diligence' requirements of the Coal Management Program.

Such a sequence of events can only end in even more unproductive speculation with Federal coal resources. Rather than putting a stop to past abuses as it was intended to, the Federal Coal Management Program is being distorted by the Departments of Interior and Energy into a vehicle for creating new abuses. The public, the owners of the coal resources, will be the losers.

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March 10, 1981

I would like to comment on the coal target you have discussed here. The bulls-eye of that target sits uncomfortably close to me.

I am Wally McRae. I own and operate a ranch south of Colstrip, Montana. I am a member of the Rosebud Protective Association, which is an affiliate of the Northern Plains Resource Council.

At the hearings held here in Billings in January on the preliminary coal leasing target, Walter Archer, President of the Powder River Protective Association, testified for Northern Plains. He pointed out that the demand for coal, especially in this region, is well below capacity; that draglines are idle; that the growth rates of electricity demand are well below previous projections; and that literally billions of tons of Federal coal in the Powder River Region are already under lease to, but undeveloped by, many of the same companies who have expressed interest in more coal leasing in this region. Mr. Archer said that, in the face of all this, the preliminary target of 776 million tons seemed like something out of Alice in Wonderland.

Apparently the Mad Hatter is alive and well in Washington, D.C, because everyone from the Department of Energy to the Council on Wage and Price Stability seems to think that 776 million tons isn't half enough.

We believe that common sense has been abandoned in the setting

of coal leasing targets, and we would like to know why.

Accordingly, I would like to announce today that we are asking Senator John Melcher to conduct an investigation into the setting of coal lease targets, in light of the billions of tons already under lease for which there is no demand. We hope that hearings into this subject would determine what the effects of a lease sale of the size proposed would be on competition, given the Consols and U.S. Steels who have expressed interest in new leasing and already hold hundreds of millions or billions of tons of the public's coal, undeveloped.

We understand that Senator Melcher would like to hold hearings on this subject. The citizens of this country have a right to know why the Department of the Interior and other Federal agencies are in such a hurry to lease billions of tons of their coal to the very companies who have been sitting on federal coal leases for years. They have a right to know whether speculation with publically owned minerals is at the bottom of this.

Preliminary Tract Ranking
Powder River Region

Suggested Ranking	Coal	Env.	S/E	Overall
Wyoming Tracts				
Little Rawhide	H	H	H	H
Keeline	H	M	M	M
Two Top	H	H to M	H	H to M
Duck Nest Creek	H	H	H	H
Mt. Logan	H	H-	M	M
Kintz Creek	H	M	M	M
Fortin Draw	H	H	H	H
Rocky Butte	H	M+	M	H to M
Timber Creek	H	M+	H	H to M
Wildcat	H	M	M	M
Rockpile	M	L	M	L to M
Calf Creek	M	M	M-	M
Hay Creek	M	M	M	M
Spring Draw	M	M	M	M
Montana Tracts				
Spring Creek	H	H	H	H
Colstrip A & B	H	M	H	H
Colstrip C	L	M	H	H
Colstrip D	M	M	H	H
West Decker	H	H	M	H
North Decker	M	H	M	H
S.W. Otter Creek	M	M	L	M
Ashland (Coalwood)	M	M	L	M
Ashland (Decker-Birney)	M to H	M	L	H
N.W. Otter Creek	H	M	L	M
Tract Ranking by Montana				
Colstrip A&B	H	M	M to H	H
Colstrip C	H	M	M to H	H
Colstrip D	M to H	M	M to H	H
Spring Creek	H	M	H	H
North Decker	H	M	M	H
West Decker	H	H	H	H
Ashland (Coalwood)	M to H	L	L	M
Ashland (Decker-Birney)	H	L	L	M
N.W. Otter Creek	H	L	L	M
S.W. Otter Creek	M to H	L	L	M

H = High
M = Moderate
L = Low
Env. = Environmental
S/E = Socioeconomic

11-565 0 - 82 - 7

More coal leasing urged

By PATRICK DAWSON
Of The Gazette Staff

The Powder River Basin Regional Coal Team voted Tuesday to recommend the leasing of over 1 billion tons of federal coal in Montana and Wyoming in order to meet what some officials say is a growing "national need."

Others fear the plan is more likely to foster private greed.

The sale would take place in 1982.

Sen. John Melcher also confirmed Tuesday that he will call for congressional oversight hearings to determine if the need is really there.

"I don't like that, it's too much," the Democratic senator told The Gazette after being informed of the team's decision.

"I'm skeptical of the wisdom of this," he said. "We're not using that much coal out of the Powder River Basin. We've heard for years how much coal is going to be developed in the West, but it hasn't happened yet. This is big public policy as far as I'm concerned — Montana is affected by it directly."

The Powder River Regional Coal Team met in Billings to act on what Department of Energy forecasters believe is a growing demand for coal in the United States.

The team is made up of regional Bureau of Land Management directors and federal- and state-appointed members.

The meeting room in the Holiday Inn West was packed with men representing major oil and coal companies. They want the area opened up for leasing.

(More on Coal, Page 16A)

BILLINGS GAZETTE
Wednesday
March 11
1981

Coal

(From Page 1)

But there is evidence that DOE is jumping the gun in wanting to lease out that much federal land, according to Melcher and some of the participants in Monday's meeting. Melcher said he feared excessive additional leasing would result in more speculation than actual production.

Others testified that private companies leasing large tracts of public coal reserves at "today's cheap prices" would benefit from sitting on the leases, and have little of no obligation to mine it.

A so-called "diligence" clause proposed for the program requires leaseholders to mine at least 1/40th of their reserves within 10 years or lose the lease.

But John Broderick, of DOE's leasing policy office, told the panel that there should be some "flexibility" allowed in the diligence requirements, giving the companies even more latitude.

One team official expressed concern that some leaseholders might be left holding the bag if the coal market doesn't expand, as DOE has predicted.

"Private industry should be allowed to take a risk here — give us a chance to lose our shirts," said Steven Jones of Chicago, representing the coal division of Standard Oil of Ohio (SOHIO). Jones said his company was "interested in breaking into the Western coal market" through federal leases.

Regardless of DOE's forecasts for a doubling of national coal production from 1979 to 1990, other indications point to a soft market for Western coal.

Mine expansions have been delayed, workers laid off and the demand for electric power plant fuel has leveled off substantially.

There are already over 400 coal leases on federal land. Of those, only 99 are now producing, and about 300 others have not submitted a mining plan, according to former Asst. Interior Secretary Guy Martin, who testified before the Senate Energy and Natural Resources Committee last June 12.

Under questioning from Melcher, Martin said, "There is not a market for the coal on those leases ... They don't have the capability to sell it."

But a DOE "executive summary" lists national coal production goals ranging from a projected 1985 low of 987 million short-tons to a high of 1,334 million tons. The 1979 production total was 766 million tons.

The DOE forecast envisions a swelling demand for coal by electric utilities, industrial boilers, synthetic fuels and foreign markets.

"I'm very serious about wanting to look at this," Melcher said. I would hope that (Interior) Secretary Watt and the energy companies welcome us to look at it. We would be glad to hear anyone's plans — I'd be delighted to hear any company that is interested coming forward and tell us what they plan. It just seems to me that wanting to lease over a billion tons of coal in this area is an overkill. It all bears explaining. We'd like to draw it out in an oversight hearing, if we can, before Watt goes off into the wild black yonder."

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TESTIMONY OF BILL MACKAY, JR.

for the

NORTHERN PLAINS RESOURCE COUNCIL

Powder River Region Draft Environmental Impact Statement:

Coal

July 30, 1981

Billings, Montana

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TESTIMONY OF BILL MACKAY, JR, ON THE POWDER RIVER DRAFT EIS
July 30, 1981, Billings, Montana

My name is Bill Mackay, Jr. I am from Roscoe, Montana, and I am a member of the Northern Plains Resource Council.

I am here representing NPRC members in Powder River and Rosebud Counties who could not make it today because of the ridiculously short, and illegal, notice provided for this hearing. That notice, unfortunately, makes this hearing on the Powder River Draft EIS a pointless waste of the taxpayers's money.

This hearing is unnecessary. The coal lease sale which this EIS is supposed to evaluate is unnecessary. There simply isn't any demand for the coal BLM proposes to lease, and there won't be any demand for twenty years or more. A coal lease sale now would be an unproductive giveaway, an invitation to energy companies to speculate with public coal at the expense of the taxpayer. It will not advance our country's goal of reaching energy self-sufficiency.

The existing mines in the region are producing barely half of the coal they are capable of producing. In Montana, we have had miners laid off at Decker, at Colstrip, and at Westmoreland's Absaloka mine. And now we face the possibility of a slowdown at the Spring Creek mine, which just opened.

Even the Department of the Interior has admitted that this huge overcapacity may exist into the 1990's, even if no

new mines are opened. In the West alone, well over 100 million tons of overcapacity exists. There are also about 8 billion tons of federal coal--enough to last the entire country for almost 10 years--in Powder River Basin leases already handed to the coal companies. Most of these leases don't even have mining plans, because there is no market for the coal.

We were amazed last year when, despite all of this, BLM proposed to lease 776 million tons more. That would be a ridiculous and irresponsible handout to the coal companies.

The massive, uncontrolled leasing of federal coal during the 1960's was the major reason that the Department of Interior had to stop leasing coal in 1971, and design a new leasing program to prevent rampant speculation by private companies with the public's coal. But instead of correcting past abuses, the Department of Interior now seems to be intent on covering them up. In fact, Secretary Watt wants to add to past mismanagement.

Not content to handout just 776 million tons of unneeded federal coal to the very same companies who are already leading speculators in public coal--companies like Consol, Shell, and Pacific Power and Light--Mr. Watt has doubled the giveaway, to one and a half billion tons of coal. In other words, on top of billions of tons in existing, non-producing leases, and in the face of a huge overcapacity in existing mines, Watt proposes to lease enough coal to open six major new mines and expand production at several more existing mines. One and a half billion tons is far more than needed to meet the Department of Energy's

highest projection of demand--a projection which is widely regarded as greatly inflated.

The abuse may not end there. Mr. Watt has strongly hinted that he is going to double the 1982 giveaway again. Even a billion and a half tons won't be enough in handouts.

This EIS doesn't even try to demonstrate the need for this lease sale. That is the most serious deficiency in the EIS, but it is certainly not the only one.

This EIS is inadequate for two basic reasons, and a host of specific reasons. First, it does not include an analysis of the impacts of leasing specific tracts of coal, as it is supposed to do. Second, it does not have a realistic analysis of the impacts of not leasing coal, which is also a requirement.

The EIS, incredibly, claims that not leasing will have a greater impact than leasing. I don't know what the reasoning behind that claim is supposed to be, because the figures in the EIS itself flatly contradict such a conclusion.

The absurdity of that statement is obvious. But the same twisted logic is found over and over in this EIS. For example, the EIS claims that aquifers ripped up by draglines will, miraculously, reappear stronger than before. Instead of destroying springs, as stripmining has done up to now, BLM says that stripmining may cause creation of new springs.

The EIS also manages to completely ignore the impact of a hundred miles of railroad running through the middle of

nearly every ranch on the lower half of the TongueRiver. The railroad would not be built unless the lease sale is held as proposed in this EIS, but the EIS doesn't discuss it.

And the EIS claims that reclamation in the Northern Great Plains has been proven successful--but it uses as proof studies that were done on reclamation potential, not on actual reclamation. The EIS blithely ignores studies conducted on actual reclamation efforts around the West that contradict its assumptions. Although not a single acre of land has yet been reclaimed to the standards set for release of reclamation bonds under Montana state law, BLM assumes that reclamation is an established success story.

There is not time today, or perhaps this year, to list all of the erroneous assumptions, mistakes, and gaps in this EIS. One more statement though, stands out. The EIS says, and I quote, "Energy production within the region is at an all time high and rapid growth is occurring." It is absolutely incredible that BLM can make this statement in the face of the huge slump facing the coal industry in this region. There isn't a single mention in the entire EIS of the current coal glut, the 50% overcapacity in area mines, the unemployment of area miners due to overleasing and overcapacity, or the billions of tons of federal coal already under lease. There is no mention of the unproductive, speculative profits that have been and still are being made at the taxpayers' expense with public coal.

This EIS is wholly inadequate, but that in itself is not surprising. What is surprising is that BLM would make such a transparent attempt to whitewash Mr. Watt's 1.5 billion ton giveaway.

Comments of

the

NORTHERN PLAINS RESOURCE COUNCIL

ON

The POWDER RIVER DRAFT ENVIRONMENTAL IMPACT STATEMENT, COAL

U.S. Department of the Interior

Bureau of Land Management

September 14, 1981

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INTRODUCTION

The Northern Plains Resource Council (NPRC) appreciates this opportunity to comment on the Draft Powder River Regional EIS (EIS). NPRC is a private, non-profit organization of ranchers, farmers, and other citizens in Montana concerned about the effects of unwise and poorly planned energy development on the agricultural industry. NPRC members in Southeastern Montana have been monitoring and participating in BLM land use planning and coal management related activities for the past ten years.

NPRC has reviewed the draft EIS, and concluded that it is seriously flawed and totally inadequate for its intended purpose. It fails to conform to National Environmental Policy Act and Coal Management Program regulations. It fails to satisfactorily analyze issues raised by the public in the scoping process and in various planning efforts. It completely ignores the central question of whether there is a need for renewed leasing in the Powder River region. The EIS fails to analyze the impacts of leasing on agriculture. The analysis of environmental impacts is incomplete, filled with erroneous assumptions and data, and it contains numerous logical fallacies. The document is totally inadequate as a basis for decisionmaking, especially decisionmaking as important as that involved in the planned Powder River Coal Lease Sale. BLM should correct the deficiencies outlined here, and release a new draft for public comment in accordance with NEPA regulations (1502.9-a).

These comments are divided into general comments, comments on specific parts of (or gaps in) the EIS, and a short concluding section with recommendations.

GENERAL COMMENTS

I. The preparation and content of the EIS fail to conform to the spirit and the letter of National Environmental Policy Act regulations and Federal Coal Management Program regulations.

The first set of public hearings on the EIS was held illegally because notice for the meeting was inadequate. Many concerned citizens who have been involved in BLM land use planning for several years, and presumably should be on BLM mailing lists, never received a copy of the EIS.1

The EIS is supposed to be prepared on a proposed lease sale schedule and alternatives (see 43 CFR 3420.4-4(e) and 3420.4-5). The EIS does not analyze alternative lease sale schedules.

The EIS is supposed to consider the impact of leasing each specific tract as well as the intraregional cumulative impacts of leasing (3420.4-5a.1). The EIS fails to analyze impacts of tracts for comparative purpose or for any other purpose. Instead, specific tracts were analyzed only in "Tract Profiles" which did not accompany the EIS. This is insufficient to meet the requirements of 3420.4-5(a):

1. The clear language of 3420.4-5(a) states that impacts of leasing specific tracts are to be analyzed in the EIS.
2. The Tract Profiles are not, in any case, NEPA documents.
3. The profiles are not sufficient for the purposes of intertract comparison, although intertract comparison is the reason 3400 regulations require impacts of leasing specific tracts to be analyzed in an EIS.
4. The tract profiles were not generally available. No notice was published in the Federal Register or in local newspapapers announcing their availability or inviting public comment. No mention is made in the EIS or in notices inviting comment on the EIS to indicate that the tract profiles are to be considered as part of the EIS.
5. A letter from the Miles City District Manager to the NPRC office in Glendive dated January 23, 1981 referred to the profiles as 'voluminous in-house documents not in a form for public distribution'.
6. NPRC staff attempted to get <u>one set</u> of the tract profiles from the BLM office in Billings, just two days before the hearing in Broadus, Montana on the EIS. The NPRC staff was told that the documents were not available. The Miles City District Office also did not have extra copies for distribution.

For the above reasons, the profiles are not sufficient to allow comparison of the tracts by the public <u>during the EIS process</u> as required by 3420.4-4(e). NPRC reserves the right to participate under 3424-4(e) until such time as BLM publishes a draft EIS that is in compliance with group 3400 regulations, NEPA regulations, and contains analyses of the impacts on specific tracts. Until BLM complies with 3420.4-4(e), NPRC's position (in accordance with the express language of 3400 regulations) is that the Secretary of the Interior may not make any final decision on the adoption of a regional sale schedule including any of the selected tracts (3420.4-4(e)).

Ranking and selection of tracts and the preparation of a lease sale schedule are not supposed to begin until there is a final regional leasing target. The Powder River EIS is based on analysis of ranking and scheduling conducted before the Secretary had even chosen a <u>preliminary</u> target.

II. <u>The EIS was prepared without due consideration of the issues raised by the public in the NEPA scoping process and previous planning efforts.</u>

The Eastern Montana Growth Task Force recommended several parameters for the analysis of social and fiscal impacts on local communities. Many of these impacts are not even mentioned in the EIS, let alone analyzed.[2]

The Coal Team was also informed about the concerns of local citizens in the region about the need for adequate community development lead times, and the effects of rapid growth on senior citizens and low-income persons. None of these issues is addressed in the EIS.[3]

Finally, Keith Bennett of BLM prepared a paper at the Coal Team's request, entitled "Regional Concerns in Coal Leasing". Of the unananimous concerns of the regional public identified in that document, virtually none are analyzed in the EIS. His paper made a special point to emphasize the concern expressed about the impacts to agriculture, yet analysis of the impacts to agriculture (and of the specific sub-issues Bennett identified) is almost completely absent from the EIS.[4]

The EIS even fails to discuss the economic viability of opening new mines in a production region plagued with overcapacity; disruption of family farms and ranches; changes to agricultural productivity (as opposed to changes in gross agricultural production); or changes to rural quality of life--yet all of these are supposed to be tract ranking factors (Table 1-2). The EIS provides no useful information on these topics for tract ranking purposes.

In the introduction to the "Powder River Management Framework Plan Amendments" (Amendments; BLM, June, 1980), the BLM made the following committment:

> ...serious issues remain unresolved regarding the specific impacts of mining on the area's agricultural land base and the region's quality of life...
>
> We totally agree that these impacts, as well as the overall regional perspective, must be assessed and the issues resolved before any dicisions to mine coal are made...
>
> These issues are a matter of record, and the Bureau is committed to a reasoned, sound resolution of all remaining issues prior to any leasing decisions being recommended to the Secretary.

The EIS fails miserably as a fulfillment of that pledge.

In comment on the Amendments, Patty Kluver raised the issue of the degradation of groundwater quality and the effect of that degradation on wildlife and livestock. In response, BLM pledged to address this issue in the EIS. The EIS addressed the issue only in a cursory fashion (cf. specific comments below) and ignores the evidence mentioned in Mrs. Kluver's testimony.

In response to Jean Hough's testimony on the Amendments, BLm stated:

> The numerous major potential impacts cited (i.e. mine-mouth utilization, reclamation, etc.) are impacts of mining and leasing...activity planning (including a regional environmental impact statement) will address those impacts...

The EIS, however, fails completely to address mine-mouth utilization or any other end-use impacts. Other "major potential impacts" such as reclamation are addressed inadequately or not at all in the EIS (cf. specific comments below).

In response to Mr. Weiner's comments, BLM said "...threshhold levels may be developed during coal resource activity planning based on public and state/local government comments." Yet BLM failed to solicit such comments or to consider the comment of Mr. Weiner, the comments of Ms. Hough and others made previously, or the provisions of the coal management program regarding the setting of threshhold levels. The EIS fails to discuss any threshhold levels, or whether or not threshhold levels might be appropriate.

Again in response to Mr. Weiner, BLM stated that "...the potential impacts on specific farms and ranches from leasing and mining coal will be considered in the regional (activity plan) EIS." The EIS fails to analyze even <u>one</u> farm or ranch and the effects leasing and mining might have on the profitability of its operation.

NPRC protested the adoption of the Amendments to the State BLM Director. The Director, Mr. Penfold, denied the protest in part on the following grounds:

> The tracts will then be analyzed, ranked, and discussed in the Powder River Regional Environmental Impact Statement. The impact statement <u>will consider the impacts on each tract</u>, should mining occur, as well as the cumulative impacts of leasing different arrays of tracts to meet the <u>established regional production target</u>. (Emphasis added).

The EIS fails to analyze the impacts on each tract as the Director pledged. Further, the EIS was prepared without an established regional production target.

III. <u>The EIS totally fails to address the issue of coal demand and the need for renewed coal leasing in the region</u>.

One of the most important issues raised by the public, industry representatives, Interior Department officials and other government agencies concerns the need for new leasing in the Powder River Basin. NPRC has commented extensively on the need for new leasing previously in activity planning. The EIS fails to provide any rationale for the proposed leasing target, to provide any reason for selecting that target rather than any other, or

to analyze other possible targets. At a minimum, the EIS should include the following as alternatives, in addition to the four alternatives considered:

1. Leasing of maintenance tracts only.
2. Leasing to meet the originally established target of 776 million tons of federal coal.

The omission of any rationale for the size of the proposed lease sale is especially critical because there is no publically available document which explains or justifies the proposed 1.5 billion ton lease target. The Interior Department refuses to make the Powder River Lease Target Secretarial Issue Document available to the public. There is, therefore, no information available to the public from BLM to provide any basis for a recommendation on which alternative discussed in the EIS best responds to the nation's energy needs and coal management policy. Commentors have no basis for balancing environmental consequences of proposed actions against the need for the proposed actions, because no need for the proposed actions is anywhere identified.[5]

IV. The EIS was prepared under an accelerated schedule, which is partly responsible for the inadequacy of the document.

The schedule for preparation of the EIS as published in the Public Participation Plan and approved by the Regional Coal Team was accelerated without changing the Plan and without any action or discussion by the Regional Coal Team. While it is commendable than an EIS can be finished ahead of schedule, it is only commendable if the early completion date is not acheived at the expense of accuracy, sufficiently rigorous analysis, or compliance with applicable guidelines. The Powder River EIS was completed ahead of schedule at the expense of all three.

V. The assessment of impacts to agriculture, regionally and on a site-specific basis, is totally inadequate.

BLM is well aware of the history of NPRC's attempts to obtain adequate assessments of the impacts of leasing throughout the BLM planning process. Because of these efforts, BLM promised much analysis of impacts to agriculture in the activity planning process, and specifically in this EIS. The EIS, which is nearly devoid of any information on the impacts of leasing on agriculture, is therefore especially disappointing to NPRC.

The only discussion of the impacts to agricultural operations and economics is a reference to the two tables in Appendix G. These tables, in turn, consist of an almost useless compilation of impacts to on-site operators, the derivation of which is a complete mystery; and a table of statistics taken from a drought year in the region, which is apparently intended to show that stripmining even the whole of Powder River and Rosebud Counties would have only a negligible effect on national food production.

The EIS completely ignores the most important impacts to

agriculture, which are those that occur outside of the mining area (where landowners receive no compensation for damages). The discussion of issues vital to agricultural productivity--reclamation and goundwater--presents no new data or anlysis, but rather consists of platitudes and generalizations and unfounded assumptions. The entire discussion of these important issues lacks any factual supporting evidence.

The impacts of associated facilities, such as new railroads, are completely ignored, although the preferred alternative would be associated with the permanent disruption of dozens of ranches on the Tongue River and elsewhere due to the construction of railroads. Many of these ranches would be rendered uneconomical as ranching units by the proposed action, yet the EIS fails to analyze this impact. The impacts of mine-mouth utilization, which are much more significant to agricultural productivity on a regional basis than even the impacts of mining, are not included in the EIS.

The EIS generally exhibits no understanding of the connection between disruption of part of a ranch and the profitability of the ranch as a unit. This problem causes the EIS to understate the only costs it did assess in regard to impacts of leasing on agriculture, the on-site impacts. The EIS fails to discuss the effect of marginal impacts (such as degraded, but not ruined, groundwater, the costs of well replacement, the effects of aquifer "relocation") on ranch economics. It is not enough to say that a shallow aquifer may be replaced by a deeper well, and to then assume that there is no impact on agriculture, as the EIS does repeatedly. The extra costs of drilling and operating that well must be identified.

SPECIFIC COMMENTS

SUMMARY

General Conclusions

The EIS states that "the No-Action alternative would have impacts considerably greater than any of the other alternatives in the EIS."

This statement is suspect on its face, palpably false upon examination, and is flatly contradicted by the data elsewhere in the EIS. For the most obvious example of data which contradicts the statement, see the summary table 2-1 on pp. 22-24. The statement is based on the faulty premise that it is permissable to compare the marginal impact of leasing tracts to the baseline impact of development that will occur with or without leasing. Of course, the proper comparison for the purpose of the summary is between the impacts of the baseline and the impacts of the baseline

together with the impacts of the tracts to be leased. To compare anything else is ludicrous, misleading, and invalid. The conclusion is also based in part on the statement that the impacts of leasing differ between alternatives by magnitude, rather than by type, and the magnitude of impacts is generally proportionate to the amount of coal produced.

This is an assumption which underlies the entire EIS analysis. It is not a conclusion. It is an invalid assumption, since the impacts of leasing will be entirely different--by type, not just by magnitude--from the impacts of the no-action alternative for the Otter Creek and Tongue River Valleys.

The EIS states that "All the alternatives, including the No-Action, would further commit the region to a single economic base (coal). This trend is well established in Wyoming but would create a shift in economic base in Montana where agriculture has accounted for a significant part of the economic base to date." (Emphasis added).

The statement is false. Agriculture is and will be the dominant economic force in southeastern Montana, even with the scale of development analyzed in the No-Action alternative. Agriculture is not, as stated, merely a "significant" part of the economic base in Montana; it provides the majority of the region's economic base, and it is the largest industry in the state.

Highlights

The section on water resources mentions shallow aquifers as the only area where problems would be created by leasing, and says that deeper water is needed for human consumption, anyway. This fails to note the impact of degraded water quality or increased pumping costs for deep wells on agricultural productivity.

The section on air quality mentions only "localized" impacts, and fails to note the impacts of end-use (on-site conversion). This is a major deficiency in the EIS.

The summary states that "reclamation success has shown to be good (sic) (Packer, 1974)." This conclusion is not warranted (cf. detailed discussion below).

Under "Land Use", the EIS states: "Land use patterns are expected to shift from agricultural toward mining and urbanization without new federal coal leasing and implementation of the preferred alternative would change this very little."

The EIS does not state which way this would change. The conclusion, in any case, contradicts the finding that 44 more ranches would be impacted under the preferred alternative. It also ignores all off-site impacts, including the impacts to ranches along Tongue River and Otter Creek which would result from the construction of the Tongue River Railroad, due to adoption of the preferred alternative. Further, it ignores

the fact that without Federal leasing, land use patterns would not shift to industrial uses in Southeastern Montana, since no new mines would open without federal leasing.

The EIS says, on page two, that "losses to the ranches that would be substantially affected would be offset by royalties or fees paid by the mines for the use of private land."

This is a gross misstatement and reflects a callous and short-sighted attitude about land use and impacts to agriculture. It completely ignores the national question of the availability of agricultural land, which would seem to be the central question regarding land use. Royalties to landowners do not bring more land into agricultural production.

The statement totally misses the impacts to agricultural operators off-site. These landowners receive no royalties, although the impacts off-site (aquifer disruption, ranches bisected for railroad rights of way, and so on) may dwarf the impacts on the minesites.

P. 3: The summary of transportation impacts does not include the cost of need improvements to highways near Ashland. It doesn't mention the Tongue River Railroad, which would have been appropriate at this point in the EIS. The statement says that the preferred alternative "equates" to 50 trains a day through Miles City, but it fails to note if this means 50 trains all together or 50 more than without leasing.

The EIS states: "Increases in population are expected with or without new federal coal leasing." This is not true for southeastern Montana, where the increase of population without leasing is expected to be slight and gradual. The EIS then claims that "most of the impacts (in Rosebud County) could be mitigated but only through strong community committment and assistance from both federal and state governments." The EIS fails to note here (or elsewhere) how much money is available, what sources (specifically) it would come from, and so forth. The statement inexplicably closes out the option of industry assistance in mitigating impacts.

CHAPTER 1: PURPOSE AND NEED

The section on required authorizations neglects NEPA.

At page 6, under the "Review of Program Implementation", NPRC is painted as a scapegoat for the withdrawl of the lands in the Powder River MFP Amendments from this coal lease sale. The EIS states that NPRC's Protest of those amendments was responsible for the withdrawl due to a delay caused by the Protest. NPRC is owed an apology and a retraction for this statement in the EIS.

The statement fails to note that the appeal of the denial of protest was never reviewed by the BLM Director, and that the merits of the protest remain undecided. The EIS states that delay caused by the protest is responsible for the removal of

lands from consideration. This is false.

BLM planning has been going on in the area since at least 1972 (cf. Amendments). Updating the land use plans began in 1979, and were underway at least 1½ years before the document was completed. In that time, BLM completed roughly 2% of the application of the lands unsuitability criteria, so considerable effort remained to enable the lands to be considered for leasing. Whether compared with 1½ years, 2½ years, or the 10 years that have elapsed since planning began in the area, the (at most) one month delay caused by the appeal of the protest pales into insignificance. It is plain that BLM's planning schedule allowed insufficient time for the application of the unsuitability criteria and the completion of other planning steps, and that BLM decided to drop the areas of presumably limited interest rather than delay the entire lease sale. Delays in completion of BLM responsibilities--not NPRC's protest--caused the areas to be withdrawn.

The opportunity to protest MFP amendment decisions was outlined in the public summary document on the Amendments. Presumably, BLM has the foresight to plan for a protest period when establishing the necessary lead times for planning purposes, and did so in this case. It is reprehensible for BLM to attempt to attribute a delay caused by its own planning deficiencies and judgemental mistakes on NPRC, which merely exercised its right to participate in BLM decisionmaking by calling attention to BLM's deficiencies. NPRC has been maligned as a result at several meetings of the Powder River Regional Coal Team, and again in the EIS.

In discussing the Tongue River Unsuitability Petition, the EIS incorrectly names three affiliates of NPRC. The correct names are the Tri-County Ranchers Association, the Rosebud Protective Association, and the Tongue River Agricultural Protective Association.

page 7. The EIS states that "energy production within the region is at an all-time high and rapid growth is occurring... Feasiblity studies for additional coal-fired power plants are being conducted by companies such as Tri-state Electric and Black Hills Power and Light..." The EIS goes on to mention synfuels projects such as WyCoal Gas.

The statement fails to mention that the feasiblity studies have in many cases resulted in postponement of plans for power plants. The WyCoal Gas project has been dropped.

The statement is incredible in light of the tremendous coal glut in the region. It is hard to believe that the EIS could discuss energy production in the region (not to mention the need for new leasing) without any mention of the tremendous overcapacity in existing mines in the region. This is one of the most serious deficiencies in the EIS, because it is pointless to debate alternatives and varying levels of impacts unless the need for incurring those impacts exists.

The EIS not only fails to discuss any justification of the need for new leasing, but it also fails to note the existing situation of the coal market in the region. (For a brief discussion of some of the issues involved, see Attachment D).

CHAPTER 2: ALTERNATIVES INCLUDING THE PROPOSED ACTION

Introduction

The resource disciplines used in the EIS did not include any agricultural sciences, a deficiency with obvious results in the EIS.

Assumptions

The EIS assumes all relevant laws will be followed. Presumably, one of the main purposes of the EIS is to assess the practicability of compliance with those laws (i.e. reclamation, diligent development requirements, etc.).

Population impacts are assumed to be divided 60-40 between Rosebud and Powder River Counties. How can something as important to the assessment of leasing impacts by assumed? This throws the credibility of the entire social economic and fiscal analyses into doubt.

The EIS assumes that "post-mining land use will be the same as pre-mining land use, except for the lands used for housing or public facilities." This is an outrageous assumption. It is not supported by a single example in the Northern Great Plains where pre-mining land use has continued at comparable levels after mining. It ignores railroads and railroad rights of way and other associated impacts which permanently change land use. BLM has assumed away one of the most important questions which should have been addressed by analysis in the EIS.

Alternative 1

Groundwater: The EIS states that "wells usually can be replaced by tapping deeper aquifers or with wells in spoil aquifers." The statement ignores the increased pumping costs of deeper wells, and fails to demonstrate that spoil aquifer water quality will be equal to or better than premining water quality. The EIS states that "springs may eventually reappear, but would be in different locations." The statement should indicate the probability of this occurence, any changes in quality, and describe the frequency with which springs will be relocated to different pastures or onto new ranches; "eventually" should be defined. Examples of similar occurrences on actual minesites should be given.

The statement says that "impacts of coal mining on groundwater are restricted to an area within a few miles of the mine site." Again, examples where this has been true in the past, and studies or other supporting evidence, are needed.

The EIS states, "shale layers tha may have caused springs and seeps would be destroyed; however, the increased infiltration may cause increased groundwater inflow to streams or the creation of new springs and seeps near the mine site." The EIS should state whether these changes would be beneficial or harmful; how these changes would occur, and in what areas under consideration for lease; the EIS should give examples, again, where similar occurrences of such restoration exist; and it should cite whatever studies underly this analysis.

Similar statements concerning groundwater and surface water are found throughout the EIS. No examples of the types of miraculous reconstruction of groundwater resources which the EIS describes are given. Instead, hypothetical scenarios are used to analyze impacts to groundwater. The impacts of changes that the EIS does predict (relocation, or degradation of groundwater) on economics of ranching units are not analyzed. No studies of groundwater problems--such as those conducted at Colstrip, Montana, for mine permitting purposes--are cited. For the purposes of keeping these comments brief, objections to all such statements are hereby incorporated.

Air Quality: This section should describe the impacts of mine-mouth utilization (power plants, synfuels plants, etc.) as well as the mines, on air quality. Under Alternative 2, the EIS states that "estimates of total suspended particulate (tsp), nitrogen dioxide (NO_x), and sulfur dioxide (SO_2) emissions were calculated for mines,cities, major roadways, and major point sources." However, other than to cite 1995 regional particulate emission projections, none of this information--by tract, by region, or by source--is contained anywhere in the EIS.

Soils, Vegetation, and reclamation: The EIS states that "reclamation success has shouwn to be good (Packer, 1974) although some areas could require more intensive and costly management." The Packer study is controversial, and inapplicable in any case as proof of reclamation success. The study was written before the Federal stripmine act--which contains the legal standard for judging reclamation success--was written. It is a study on reclamation potential, not reclamation success. The statement does not cite any source for the comment concerning more costly management in some areas; it certainly is not from Packer.

Transportation: The EIS incorrectly lists the Tongue River Railroad as an impact under the no-action alternative. Tongue River Railroad officials have informed the Powder River Regional Coal Team that production of 30 million tons per year in the area is necessary if the railroad is to be profitable. Production of this amount annually is dependent on new leasing (Alternatives 2, 3, or 4).

Sociology: The EIS does not mention any of the social problems attendant in boomtown growth, such as drug and alcohol abuse, spouse abuse, increased crime rates, etc.

Economics: The EIS discusses only 1990 budget levels. The years between 1985 and 1990--when impacts are at their peak, but income from the mines (still under construction) will be at a minimum--is much more critical in terms of local budgets than 1990.

The EIS assumes balanced budgets without new leasing, although the no-action alternative assumes increases in coal production of roughly 200% over current production. Obviously, some communities will be greatly impacted. This is also inconsistent with the conclusion that the no-action alterntive has the greatest impact.

The greatest problem with the economic fiscal analysis is that the tables provided do not have the existing baseline and the Alternative 1 baseline together for comparison. This makes the comparison of leasing impacts misleading, and understates the overall impact of mining.

Soil quality: There is no site-specific discussion, or comparison between tracts, of soil quality in the EIS. This illustrates the critical importance of including site-specific information and analyses of tracts in the EIS document. The information would be particularly appropriate here. For example, the tracts considered near Ashland have extremely high percentages of soil that is poor and even totally unsuited to reconstruction and revegetation. These tracts may have serious reclamation problems, according to the data in the tract profiles.

The tract profiles, however, were not generally available, and the EIS contains none of this information. The bland assumptions made in the EIS concerning the ease of reclamation are contradicted by the data in the tract profiles. Had the information been included here in the EIS, some of the more outlandish predictions of reclamation success might have been tempered by the authors.

Sociology: Table 4-8 appears to contain innaccurate extrapolations from the Powder River Comprehensive Plan. The actual figures for needed services should be higher.

Alternative 4

The EIS says "...it should be noted that possible production under this alternative (467 million tons per year) exceeds DOE's high production goal (412 million tons per year). Production approximating DOE's high goal would result in impacts similar in type and severity to those described under alternatives 2 and 3."

It is clear from this statement that production at the level discussed in alternative 4 is highly unlikely. This is even more true when it is considered that virtually no one thinks DOE's high goal resembles anything approaching reality. (CF. attachment). This reinforces the need for discussion of the coal market in the "Purpose and Need" section of the EIS: BLM isn't sure whether or not the level of impacts discussed will be reached or not.

On page 21 is found the only reference in the EIS to the impacts of leasing on Agricultural economics. "Impacts to agricultural economics are considered insignificant" under Alternatives 2, 3, and 4, according to the EIS; the EIS then cites Appendix G, and refers to the tract profiles for the methedology used. This information (methedology) should be in the EIS itself, at least in an Appendix; NPRC has been unable to get a single answer as to how the figures in Appendix G were arrived at. It is clear that different methedologies were used, and possibly different data, between the calculations in the Tract Profiles and those in Table G.

The discussion is misleading in any case, since the analysis only considers impacts to agriculture on the minesites. Furthermore, the EIS elsewhere states that the preferred alternative will remove 293,500 acres from production and cause a total change in the economic base of the region from agriculture to coal. How BLM can nonetheless conclude that "impacts to agricultural economics are considered insignificant" is past understanding.

The analysis of fiscal impacts in Table 2-3 leaves out impacts to Ashland because it is an unincorporated community without formal budget'. It would seem logical to project expenses and revenue on a per capita basis, as was done with the incorporated communities. This would at least provide some analysis of likely fiscal impacts to Ashland, which could experience the greatest impact of any locality under the preferred alternative. to ignore these impacts, as the EIS does, because of the inconvenience involved in measurement is inadequate and innaccurate.

CHAPTER THREE: DESCRIPTION OF THE AFFECTED ENVIRONMENT

Introduction

The EIS leaves out many portions of the existing environment--including flood plains--because they "would not be affected regionally". However, since the EIS is supposed to include site-specific analysis as well as regional analysis, these features of the existing environment should be described in this chapter. This would seem particularly important for such areas as the Tongue/Otter Creek area, where mines and a major railroad are proposed for construction in and near flood plains.

Soils, Vegetation, and Reclamation

On page 36, the EIS states "Most soils in the region have a fairly good reclamation potential based on reclamation success of other mines in the region." This statement needs correction for several reasons. The logic is faulty, but opp

in a way opposite from the reasoning on reclamation in the rest of the EIS. Where previously the EIS cites studies on reclamation potential in an attempt to prove the existence of reclamation success, the EIS now moves from cite-specific reclamation success backwards to prove the existence of good reclamation potential.

Unfortunately, the only proof cited in the EIS for reclamation success at existing mines is the aforementioned study on reclamation potential, which leaves the EIS with fairly classic circular logic--and no evidence--on the subject of reclamation.

The "success" at existing mines is certainly not a given. Studies of actual mines--such as Reclaiming the West--have shown reclamation success to be an open question, not proven. Using the legal test of reclamation under the stripmine Act, the question is still open--no reclamation bonds have yet been released in the State of Montana. BLM's assumption, then, that reclamation is a success is both unfounded and wrong.

In any case, the success of reclamation at existing mines --if true--would still not show that most soils in the region have a good reclamation potential. The statement is contradicted flatly by the data cited earlier from the tract profiles (see, for example, the Northwest Otter Creek Tract Profile). This is, to repeat, another case where the need for tract by tract analysis is obvious. Site-specific variations in reclamation potential of soils are important to decisionmaking--reclamation potential is, after all, a tract ranking factor--and should be discussed in the EIS.

Land Use

The EIS states "productivity on these lands can only be estimated because of fluctuations caused by climate, markets. and operational decisions." This kind of pointless and vague information was anticipated by NPRC, and is precisely the reason that NPRC has been pressing BLM to do agricultural inventory in the land use planning process for several years. It is noteworthy, also, that after limiting measurement of agricultural productivity to estimates because of the variables inherent in inventory totals, the EIS then neglects to make the estimates. Fluctuations in agricultural markets, it might be pointed out, appear to be no larger than fluctuations in the region's coal market.

Transportation

The EIS incorrectly includes the Tongue River Railroad in the description of the existing environment. The railroad exists only on paper. It does not belong in the description of the existing environment.

Sociology

Community Services and Facilities

The EIS states that Ashland does not have a high school, and that students attend "private and parochial schools in Colstrip and Broadus." There is a parochial high school in Ashland; Ashland doesn't have a public high school.

This does, however, raise the question of how the costs of educating the increased high school age population in Ashland that would result from the preferred alternative are included in county budgets--are they included in the Rosebud County budget, or the Powder River County budget?

Attitudes

The EIS states that "overall, people who were interviewed within the region favored coal development. A few respondents stated they would be in favor only if it was certain the coal was needed to help meet the nation's energy requirements."

This is an inaccurate and extremely misleading summary of the survey results as reported in the Tract Profiles. The Northwest Otter Creek Tract summary reported, for example, that "this favorability is not unconditioned; if it is felt that the nation does not need the coal to ease the national energy programs or that reclamation is not possible or not planned, favorability towards coal development would be greatly reduced."

Emphasis has been supplied. Clearly, more than "a few" respondents conditioned their favorability; they conditioned it on more than whether or not the coal was needed; and some respondents were unconditionally opposed. This type of distortion of sociological survey data has no place in the EIS.

CHAPTER 4: ENVIRONMENTAL CONSEQUENCES

Introduction

The EIS states that the information in the chapter on the affected environment was used to assess the impact of No-Action "which was, in turn, used as the new baseline to assess alternatives 2, 3, and 4." This is not acceptable EIS methedology. Impacts of various alternatives on a single baseline must be compared to each other in a proper analysis. It is not valid to use one of the alternatives as a baseline.

At page 53, the EIS states "...a significant reduction in DS concentrations can be expected with increasing distance from the mined area as a result of the selective retention of ions on particle surfaces (Riffenburg, 1925; Qayyum and Kemper, 1962). Thus degradation of water quality in areas adjacent to reclaimed spoil is expected to be a slow process, and it would be centuries, if ever, before deleterious effects become significant more than a few hundred feet from reclaime

areas." There are several points that need to be made about this analysis.
1) Dissolved Solids are not the only parameter of water quality contamination due to stripmining, and indeed are not the most important pollutants to consider.
2) This is another example of the EIS extrapolating from hypothetical situations to measure impact. The practice is particularly suspect in this case, because the studies cited predate the stripmine act and present mining technology; their its applicability to the activities of 90 cubic yard draglines and their effect on Western aquifers is questionable.
3) It would be helpful if the authors of the EIS had provided a comparison here (or anywhere else in the EIS) of the hypothetical extrapolations and data from the real world. For example, all kinds of water quality degradation problems are showing up, off site and some distance from the mines, at Colstrip. A draft DSL EIS and Western Energy's application for extension of a mining permit in Area E predicts similar problems. When the hypotheses are not supported by evidence--and, in fact, are contradicted by available evidence--one begins to doubt the validity of the hypothesis.

On page 58 of the EIS, the authors state: "The success of reclamation and revegetation would depend on the nature of the mine site" and on the reclamation plan."
This statement recognizes several things that are not discussed anywhere else in the EIS.
1. Reclamation is dependent on several site specific factors, and is not a given.
2. Success will vary from place to place.
3. "Revegetation" and "Reclamation" are not identical terms.
However, the statement does not indicate recognition of another important point: that is, that reclaimed land (if reclamation is successful) will require more intensive management than unmined land, which makes the economic viability of returning it to its premining land use at least questionable.

There are several references to reclamation and reclamation success in the EIS; like the discussions on groundwater, they are largely hypothetical and NPRC's criticism of them can be incorporated here in the interests of brevity.

On page 60, in discussing impacts to visual resources, the EIS says that "mines located in these areas could also provide a resource for interpretive and educational programs." What programs? The statement apparently implies that mines are to be treated as a visual resource; NPRC is not aware of any mandate that BLM manage stripmines as a visual resource, or that stripmines are considered a visual resource for planning purposes. This statement certainly has no bearing on the discussion of the environmental impact of stripmining on the

visual resources of the region.

The EIS states further that no irreversible or irretrievabl committments of visual resources were identified. The attention of the BLM is directed to Appalachia, to the old North-South railroad bed (which is still marring visual resources of the region 80 years after construction was abandoned) and to the power plants at Colstrip.

On page 60, concerning land use, the EIS states that "underground utilities, pipelines, and overhead power lines would modify agricultural land use but would not remove acres from production." This is not accurate. Rights of way for buried utilities can remove acreage from production. Overhead power lines certainly remove acreage from production. Railroad rights of way, and roads, remove not only the acreage right of way from production, but may also reduce or negatively effect production outside of the right of way by dividing ranching units or making divided fields unprofitable to develop or irrigate.

On page 61, concerning transportation, the fiscal impacts of necessary road improvements are not quantified. These costs should be included in projections of county budget expenditures and state expenditures.

The costs of noise pollution (reduced weight gain in cattle, etc.) are not but should be included in the EIS.

On page 62, under Sociology, the discussion of the impacts on housing should include discussion of the effect on housing costs and quality of housing, not just quantity.

Tables

The figures in tables 4-1A and 4-1B appear to be annual production from Federal state and private coal, and annual production from Federal coal only, respectively. However, the figures for existing mine production are identical in each table. This is impossible, since existing production includes production of federal and state coal at many mines (eg. Colstrip.)

The figures in table 4-3, total acres disturbed, do not add up from the categories listed to the total. Note 'c' indicates that "data breakdown of total acreage is not available". The breakdown comes out to less than 25% of the total. What is the remaining 75%? Should all totals be multiplied by 4 to get approximations for each category, is the 75% not included likely to be broken down differently? The table gives no indication of whether the regional percentages of land type are well approximated by the table.

Table 4-11, p. 78, projects no increase in population for Forsyth under any of the alternatives--yeat the EIS has

previously stated that some services (for example hospitals) would be met by facilities in Forsyth and Miles City. How can the use of facilities in Forsyth increase, without and increase in the population there?

Note 'a' says that projections of community populations are based on 1980 ratios of community to county populations. Yet it is obvious that Forsyth's population projection increase (0) is not based on a proportional increase from Rosebud County's population increase.

Table 4-10 (pp. 79-80) should include budget projections for the years 1985 through 1995, at least, and not just for 1990. A budget projection for just one year is not a good indicator of short and long-term impacts to the local communities, and could be very misleading. It is not a good use of the Coal Town model.

The data in the table are obviously anamolous. Budget surpluses are projected for Powder River schools and Broadus, figures that do not correspond to any real-world situation in booming areas. This data should have indicated to the authors that there were serious problems in the assumptions used in the model, unless an example of the type of budget surpluses projected here can be found to indicate that such surpluses are likely.

APPENDICES

The information in most of the appendices is of questionable use in analyzing environmental impacts. Appendices should be included describing the methedology used to calculate agricultural impacts, changes in water quality and quantity, changes in air quality, and socioeconomic and fiscal impacts. Inclusion of such information is clearly appropriate under NEPA regulations.

CONCLUSION AND RECOMMENDATIONS.

The EIS is clearly inadequate as written. BLM should reissue the EIS in accordance with the NEPA regulations cited in the introduction. The reissued EIS must include, at a minimum:

1) A thorough discussion of the need for the proposed action, including a discussion of the market for the region's coal and existing mine capacity, undeveloped federal leases, etc.

2) Important viewpoints on controversial questions such as the feasibility of reclamation, effects of mining on aquifers, and so on (this is in accordance with NEPA regulations.)

3) Notations in the EIS where data is lacking or inconclusive (this is also in accordance with NEPA regulations).

4) A thorough discussion of the impact of leasing on agriculture, including the effect on agricultural productivity (not just gross production), off-site impacts, the effects of railroad rights of way (not just in terms of right-of-way acreage), costs of replacement of shallow aquifers with deeper wells, aquifer "relocation", etc.

5) A more detailed discussion of the impact of leasing on communities, including all of the parameters discussed by the Eastern Montana Growth Task Force. The analysis can not simply make the assumption that per capita expenditures in the budgets will be the same (in a community that must double its physical plant) in a boom period as presently, when most facilities are paid for and community expenditures are largely for maintenance.

6) The EIS must include analysis of the impacts of leasing each tract, as discussed above.

7) The EIS must include references to current, available literature on reclamation and the impacts of leasing on groundwater, much of which differs from the conclusions and assumptions of the draft as written.

8) The EIS must use a proper comparison of alternatives, as discussed above; the no-action alternative "baseline" cannot be compared to additional production due to leasing only.

9) A retraction of the false characterization of responsibility for removal of the lands in the Powder River Resource Area Management Framework Plan Amendments from the activity planning process.

10) Appendices describing the methedologies used, as discussed above.

FOOTNOTES

1. To give just one example, Walter Archer, a rancher from Olive, Montana near Broadus, President of the Powder River Conservation District and President of the Powder River Protective Association (a Northern Plains Resource Council Affiliate) has commented on BLM land use planning on numerous occassions. He was one of only two people to testify at the Powder River Regional Coal Team hearing on the DOE production goals for the Powder River region. He did not receive a copy of the EIS from the BLM. Virtually no NPRC members in southeastern Montana received the EIS from the BLM; rather, NPRC staff delivered copies picked up from BLM offices.

2. See Attachment A.

3. See attachment B.

4. See attachment C.

5. See Attachment D.

6. Reclaiming the West, Daniel Philip Wiener, INFORM, 1980, New York.

ATTACHMENT A

Eastern Montana Growth Task Force
516 Main
Miles City, MT 59301

Mr. Leo Berry
Department of State Lands
Capitol Station
Helena, MT 59601

Dear Sirs:

A guideline has been developed by the Eastern Montana Growth Task Force to aid the Ranking Teams in determining a community's ability to mitigate the impacts of coal development. Our guidelines are now limited to the most critical and expensive services and facilities for the human environment provided for by local governing bodies through existing legislation.

These services and facilities are to be evaluated by the local governing bodies in terms of current status of the service or facility, the unused capacity, the design capacity, and the lead time for approvals and construction of facilities or services. An additional column has been added for comments relevant to the specific community.

We would hope these guidelines are acceptable to the Tract Ranking Teams and that the Ranking Teams will request that the local governments provide the information for these guidelines.

Sincerely,

Barbara Kennedy -- Custer and Powder River Counties

Kevin Fenner -- Fallon County

Ed Musser -- Dawson County

Lonnie Beach -- Powder River County

In consultation with
Nancy Fishering -- Richland County
Jack Gribble -- Carbon County
Eldon Rice -- Rosebud County

CONTACT PERSON: Barbara Kennedy, 516 Main, Miles City, [illegible]

Area Region:

State:
County:
Community:
Incorporated ☐ Unincorporated ☐

Service/Facility	Status	Unused Capacity	Design Capacity	Lead time for approval & construction	Comments
...ning in progress	Board Comprehensive Plan Staff: Consultant Local				
...er Treatment	Type: Lagoon Septic Oxidation				
...er Collection	% served				
...er Treatment	Treatment Storage				
...er Distribution	% served				
... Enforcement	City County Consolidated				
...	Professional Volunteer				
...ital	Hospital clinics offices				
...	Elementary Junior/Middle Senior Post Secondary				
...ing Unit ...atory	# vacant				
	Approved				

ATTACHMENT B

Officials asked to consider all impacts before leasing coal

6/1/83

By LINDA LINN
Gazette Sheridan Bureau

GILLETTE, Wyo. — Powder River Regional Coal team members were urged to consider the effects of a 10-year coal leasing in southern Montana this week as they examined proposals for 1982 federal lease sales.

Barbara Kennedy, the planning director for Custer and Powder River Counties in Montana, warned the coal team that communities needed sufficient lead time to provide water and sewer systems, solid waste disposal, schools and recreational facilities for the influx of people created by new coal mines.

Ms. Kennedy represented the Eastern Montana Growth Task Force, an association of staff planners in eastern Mont., ta communities who work with coal developers to adequately prepare the area for boom conditions.

She made the following requests and asked for action on them with the state serving as the "lead":

• Meetings with interagency personnel from HUD, the Farmers Home Administration, the EPA, Economic Development Administration and others, together with local officials to discuss financial resources, resource planning, operation and maintenance procedures.

• Formation of a committee of advisory personnel and ranchers to discuss the arts and science of agriculture "e.g. the actual experience versus theoretical models."

• Cooperative assistance from the BLM on the development of analysis correlation on the region's growth rate, the communities' capital improvements and operations programs, the fiscal impact analysis and the projects' impact on the natural and human environments.

She stressed the need for a financing plan format and presented the coal team with probable lead times needed to develop various community services./

The lead times total 4 4 years and were the major reason for requesting that a inter-agency group including local officials be convened, she said.

Rosalind Kotz, director of the Program Development for Action for Eastern Montana, said there were approximately 100,000 people in her region and that 20 percent of these people live on incomes less than 125 percent of the poverty guidelines.

"For one person this is approximately $400 a month. Boom does not last forever and there are many who do not benefit. Many flock to coal development areas in hopes of finding employment and find only jobs for skilled workers. They aren't skilled and they become the new poor," she said.

"There is another level of near-poor people who were just making it before coal development who fall into poverty due to the rising cost of living. We don't need more poverty."

Ms. Kotz also noted the boom town crisis for seniors who become priced out of their housing and asked the coal team to place a strong emphasis on the social impacts as well as the fiscal and environmental impacts as they decide which land to lease.

A spokesman for the Montana Senior Citizens Association recommended that consideration be given to the values of older Americans — "the way of life they developed, the homes they built and surrounding acreage, the many country stores, churches and schools they helped nurture and their being so much a part of their communities and a neighbor," he said.

ATTACHMENT C

REGIONAL CONCERNS IN COAL LEASING

A DISCUSSION PAPER

BY

Keith Bennett, Regional Economist
Miles City District

INTRODUCTION

At the Regional Coal Team meeting in Cheyenne, Wyoming, the RCT Chairman Mr. Buffington suggested that information be gathered on issues and concerns among residents of the Powder River Coal Region. The purpose of identifying issues was to be sure that information which the public considered relevant to a leasing decision was gathered in a timely fashion. This paper covers the activities and findings resulting from partial compliance with that charge.

OVERVIEW

Five meetings were held with concerned Montana citizens to help in determining areas of concern in coal leasing. The meetings were designed to be geographically representative. Meetings were held in:

(1) Sidney, Montana, with community leaders (city council, planning commission, county commissioners, chamber of commerce, WIFE, etc.) - 33 attendees;

(2) Miles City, Montana, with the Eastern Montana Growth Task Force - 16 attendees;

(3) Hardin, Montana, with representatives of various human services organizations - 9 attendees;

(4) Miles City, Montana, with members of the Northern Plains Resource Council - 7 attendees; and,

(5) In rural Custer County, Montana, (Bud Failing Ranch) with ranchers, rural store owners, school board members, etc. -37 attendees.

FORMAT OF THE MEETINGS

Three different approaches were used depending on the size and interest of the audience. One approach was to simply present the nature of the task confronting the RCT and then to have those present express their wishes concerning "decision level" issues or concerns. The second was to present a hypothetical development, including likely population growth and settlement pattern, on the nearest coal area to the participants available for leasing. In this, the second approach, the audience voiced their concerns about having a development near them. The third approach was a nominal group approach where the participants cooperated in filling out a form which, in a pyramidal fashion, ordered their concerns from most pressing to least pressing.

CONCERNS AND ISSUES IDENTIFIED

Table A (below) shows the concerns identified at these meetings.

TABLE A

REGIONAL CONCERNS IN COAL LEASING

Site of Meeting	Major Concerns (Consensus Issues)	Other Significant Concerns
Sidney	-Fiscal impacts on all communities but especially in situations of split jurisdiction -Water conflicts especially in low water years -Need for advance knowledge of population change to facilitate avoiding impacts on community services	-Tax changes to cover cost of serving newcomers - impact of tax increase on agriculture -Dealing with unwanted growth and loss of local control -Reclaimability -Acid rain
Miles City (NPRC)	-Changes in tax burdens on agriculture to cover costs of service to newcomers -Acid rain and other environmental impacts which could affect agricultural productivity -Reclaimability	-Impacts on family -On site displacement of family farms/ranches -Changes in social structure -Loss of political representation -Effects of transmission corridors
Hardin	-Impacts on physical/mental health of residents -Burn out of service providers receiving stress from those in need -Impacts on youth/family -Failure to provide timely services -Ability of local political system to deal with growth	-Changing opportunities for personal development -Impacts on service delivery system especially: schools, criminal justice, crisis intervention
Rural Custer	-People pollution, especially crime and drugs -Water conflicts especially as concerns water quality changes resulting from onsite conversion	-Quality of life changes -Impact on schools -Right to control rail/power corridors -New tax burdens -Changes in economic structure

Concerns of the Eastern Montana Growth Task Force were deleted from Table A as members of the organization decided to formally input their concerns through the Montana State Representative, Mr. Leo Berry.

Interpretation of the Findings

Table B summarizes these areas of concerns and interprets them as to which are community/social concerns and which are agricultural issues.

TABLE B

SUMMARY

REGIONAL CONCERNS

Community/Social Impacts	Agricultural Impacts
**Impact on local people of confronting unwanted change.	*Water conflicts especially in low water years.
Effect on quality of life	*Disruption/displacement of family farms.
**Effect on cost of living especially quality, cost and availability of of housing.	*Effects of airborne pollutants especially acid rain from onsite conversion.
**Changes in physical/mental health of residents.	*Effects of changes in water quality on agricultural production.
Changes in economic structure.	Impacts of changing tax rates.
Fiscal impacts especially the ability to pay for increased services.	*Effects on long term productivity especially as to reclaimability.
Changes in opportunity for personal development.	**Effects on agriculture from activity of the new population.
Impact on community facilities/ services and on the (human) providers of those services.	*Impacts of transmission corridors and rights to control easements
**Impact on the family and youth.	Competition for transportation, labor, etc.

*Topics to be covered by other staff specialists.
**Topics which are not currently likely to be covered.

Conclusions

Residents of the region feel that impacts on communities and on agriculture should be seriously considered in any decision on allocating coal development. Sociologists and economists can measure many of the changes which concern people under the community/social category of impacts. Management should determine who can do similar analyses of agricultural impacts.

Requested Action

The Regional Coal Team is requested to review the regional concerns presented above and to add, modify or delete items to reflect the RCT feelings.

ATTACHMENT D: Excerpts

Development and Production Potential of Undeveloped Federal Coal Leases And Preference Right Lease Applications in the Powder River Basin and Other Wyoming Coal Leasing, Russell Building, 1981.

CHAPTER 7. IMPLICATIONS FOR NEW LEASING

When examining the question of whether there should be new leasing of federal coal, a clear distinction must be drawn between specific situations where new leasing may be appropriate on a small and limited scale (as has been done since the 1971 "moratorium" on leasing) and the need for leasing new blocks of federal coal which would allow large new mines to open. The major controversy centers on the need for large-scale leasing of new federal coal, but a few words will be said here about the conditions in which small-scale leasing is appropriate.

Small Scale Leasing

There are several situations where small scale leasing of federal coal is appropriate: 1) windows and bypass situations, 2) production maintenance, and 3) leasing for experimental mines. While there may be some dispute between environmentalists and industry over the appropriateness of such leasing in specific situations, there is not dispute that there are places where such leasing of federal coal is appropriate.

Where existing mines contain small windows or adjacent parcels of unleased coal that would not be economical to mine if they are bypassed, it is desirable to lease those small amounts of federal coal to promote efficient recovery of reserves. As a general rule, the incremental environmental impacts of continuing an existing mining operation are much less than those resulting from opening an entirely new operation, so where there is a choice between continuing an existing operation or opening a new mine, it is usually preferable on environmental grounds to continue in the area where disturbance has already occurred. Where mines

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COMMENTS OF WALTER ARCHER, POWDER RIVER PROTECTIVE ASSOCIATION AND THE NORTHERN PLAINS RESOURCE COUNCIL: COAL LEASING TARGETS FOR THE POWDER RIVER REGIONAL COAL LEASE SALE, 1982

My name is Walter Archer. I ranch near Olive, Montana. I am President of the Powder River Protective Association, an organization of ranchers and farmers in Powder River County which is affiliated with the Northern Plains Resource Council. My comments are on behalf of both of these organizations.

There is a little bit of an Alice in Wonderland feeling to this hearing. In the first place, it seems to me that the Federal Register notice is an "un-notice". It is very unclear from the notice just what the proposed coal leasing target is, or what DOE production goals the target is based on.[1] We don't have DOE's final goals. The notice for this meeting says that the final leasing target will be determined using both public comments and the final DOE goals, whenever they come out.

So I don't know exactly what numbers and reasoning I am supposed to comment on. In general, though, we must be discussing the need to lease Federal coal in the Powder River Basin. If you will excuse the expression, this is like discussing the merits of sending coals to Newcastle. The Interior Department has, in all seriousness, asked whether it should lease more coal when the

region is plagued with excess capacity already; when literally billions of tons of federal coal are already under lease in this region, undeveloped, held by the same companies who are interested in leasing more coal.

I do not question the need for short-term or emergency leasing to prevent bypass situations, or to allow opeations to continue at existing mines. As I understand the Federal Coal Leasing Program, leasing for these purposes does not require a major new coal lease sale, or a regional coal team.

The federal coal leasing target is based on figures provided by DOE's National Coal Model, to which I shall return in a minute. I presume that when DOE provides its final goals, the Coal Team will provide the public with another opportunity for comment.

According to the Federal Register notice, DOE recommended that the leasing target be prepared "within a range of values corresponding to the range between the medium level and high level production goals." Interior has followed this recommendation. No justification was given in the notice for following this recommendation, or for the recommendation itself. It seems extremely unwise to lease on the basis of a high level production goal, in view of the assumptions of the National Coal Model used by DOE for determining the high projection.

The National Coal Model is inadequate to accurately predict goals on a regional basis. It is slanted in its assumptions towards vastly increased Western coal production. This is especially true for the 'high-level' assumptions. The model

assumes that there will be a high availability of cheap Western coal, and ignores any social, economic, or environmental constraints. It neglects potential water availability problems and transportation bottlenecks. It was based on the assumption that economic growth will be paralleled by energy growth, when in fact the economic growth of the last two years has been accompanied by a decline in energy growth across the United States.[2]

The most ridiculous assumption in the DOE model is the rate of electricity demand growth on which it is based. This is the most important single assumption in the model for predicting the need for Western coal. The assumption for a high level production goal in the model is a 4.5% annual growth in electricity demand.

The only reason that the Powder River Regional Coal Team would need to lease any coal at all in 1982 is if it leases to meet "high-level" production goals. At the "low" and "medium" projections, existing and anticipated development with existing leases will more than meet the demand. The high level projections, on which the 1982 lease sale is predicated, are based on this 4.5% electricity demand growth, an assumption that is simply out of touch with reality. In 1979, electricity demand increased only 2.8%; through the first months of 1980, electricity demand was down from the year before.

According to DOE itself, total energy use declined in 1979 compared to the previous year, for the first time in a quarter of a century--although the nation's GNP rose by 2.3%.[3] The reason for the decline was an unexpected increase in energy efficiency.

It takes fewer Btu's, fewer kilowatt-hours to produce a dollar's worth of goods than it used to. The Director of the Carnegie-Mellon Energy Productivity Center expects negative energy growth over the next decade, even without more price increases, and with normal economic growth. Few forecasters predict more than a 1% growth in energy use per year for the next ten years.[4]

Far from seeing a 4.5% increase in electricity demand every year, utilities in this region are seeing slumping demand. Basin Electric Power Cooperative has postponed further planning on 2,000 megawatts of capacity originally planned for 1988. Basin also delayed start up of the just completed Antelope Valley Station by a year. They don't need the power. Construction of a second unit there is being delayed for the same reason. Just last month Tri-State G & T postponed plans for a 350 megawatt power plant, because of sluggish demand for electricity. The fact is that demand for electricity is growing far more slowly than utilities and government had projected just a few years ago. Basing the need for coal leasing on such outdated and discredited projections is senseless.

Another defenseless assumption in DOE's model is a high production level for synthetic fuels. The 1978 model assumed full production of synthetic fuels, by which they meant from 7 to 27 full size synfuels plants by 1985. It is highly unlikely that seven full-size plants will be operating by 1990, let alone 1985. Investors are apparently unwilling to back what was supposed to be the first synfuels plant in the country, at Beulah North

Dakota. And that is only slated to be a half-size plant anyway.

The assumptions of the high level projections in DOE's model are way out of line. If DOE used anything approaching a realistic model, it would be obvious that there is no need for a major new federal coal lease in the Powder River Region in 1982.

NPRC is not the only group which has criticized the model and DOE's production goals. The Western Interstate Energy Board has criticized themodel for lack of detail on coal supply and transportation variables to reflect land use planning, environmental, socioeconomic and market constraints, and for not reflecting public comment. They have also criticized DOE for not providing an estimate of the model's margin of error.

An even more serious indictment has come from a company called ICF, Inc., which just happens to have created the model that DOE uses. ICF says, according to Coal Week, that their model is being misused by DOE, and that DOE's forecasts for the Green River-Ham's Fork lease sale--the only lease sale where the model has been used--were much higher than ICF itself came up with using the same model.

If I understand the coal management program correctly, the coal team would rather not have me criticize DOE's goals. Instead, I'm supposed to provide comments which the coal team will use to balance against those goals. Presumably, I should give an idea of what an additional 92 million tons of coal strip-mined each year will mean for the environment, for social and economic impacts,

for agricultural productivity, and so on.

I don't think I need to run through the whole litany of social economic, and environmental issues. But I do want to briefly mention some of the unknowns.

There are a lot of unanswered questions here, partly because BLM has yet to fully implement its land use planning program in this area. The 'updated' and 'amended' land use plans on which this coal lease sale will be based are completely inadequate, and a lot of questions are not only unanswered but unmentioned in planning so far.

We still know very little about the effect of low levels of air pollution on agricultural productivity. We don't even know what many of the air pollutants from synfuels plants are, let alone what the effects of these pollutants will be on crops, grasses, and people. This same uncertainty also applies to solid and liquid wastes from synfuels processes.

We do not know how big the social impacts from greatly increased coal leasing will be. We have only a rough guess as to how many thousands of people it might take to build a synfuels plant.

We do not know if any synfuels plants will ever be built without massive federal subsidies. We do not know what the attitude of the new Administration will be towards such subsidies.

Finally, we still do not know if surface reclamation will be a success over the long run, and no one has yet proposed an economical means of reclaiming disturbed aquifers.

Fortunately, there is no need to rush forward with new federal

leasing. We still have time to get the answers to some of these questions.

There is currently a glut of coal in this country, and especially in the Powder River Region. Last June slumping demand for coal led to layoffs of 70 workers at Western Energy's Colstrip mine. Westmoreland coal was trying to drop a lease with the Crow Tribe, and a new dragline sat unused, rusting.

In December of 1979, Decker refused to bid on a short-term Federal lease. In October of 1980, Decker laid off 66 workers indefinitely due to slumping demand for their coal. A spokesman said that customers were not taking the amount of coal that they had contracted for. Walter Heine, Director of OSM, said that national coal production was 100 million tons higher than demand for the year. A Dean-Witter-Reynolds Vice-president and coal expert was quoted a year ago as saying that there was "a simply incredible oversupply of coal in the West, and the over-capacity is going to get larger and larger."

NPRC Comments on the Powder River 1982 Coal Lease Targets

The Department of Energy has said that Western coal production capacity would be nearly twice the amount of coal under contract to buyers by 1988.

A New York Times story last September said that the electric utility industry had nearly 40% more capacity than demand; a 20% margin is optimum. The demand for electricity is falling off, and so is the demand for Western coal.

Part of the excess capacity in Western coal production is due to the development of federal coal that has already been leased. And the amount of coal that is or will soon be produced from existing leases is small compared to the total amount already leased.

There are, nationally, approximately 20 billion tons of Federal coal already under lease. Very little of this coal is being produced; in fact, mining plans have yet to be filed for most of the leases. About half of the coal in these existing leases--around 10 billion tons--is in the Powder River Region. That is enough coal just in existing federal leases in this region, to supply the entire nation's needs for several years, even if we met the former President's goal of doubling coal consumption by 1985, and even if we produced all of the nation's coal from the Powder River Basin.

It seems to me that it would be foolish, if not irresponsible, to lease even more federal coal under these circumstances. This is especially true since many of the companies who have expressed an interest in the 1982 coal lease sale are among the largest holders of existing undeveloped leases in the country. Shell, Pacific Power and Light, and U.S. Steel hold over 40 existing

leases covering nearly 100,000 acres of federal coal lands, containing a couple of billion tons of coal. Very little of this coal has been developed.

A little history lesson seems to be in order. The United States put a moratorium on further federal coal leasing in 1971 because the Department of Interior was leasing billions of tons of coal; and the more that was leased, the less was developed.

The Interior Department has gone through about three programs to start leasing coal again. It has never assessed these existing leases to see if we really need to give more of the nation's resources to the companies who are sitting on existing leases.

In 1979, when the current leasing program was announced and a Draft Environmental Statement was produced, NPRC commented that the environmental statement and the coal program "rely far too heavily on the Department of Energy's production targets in assessing the need for federal leasing and, in fact, the Draft Environmental Statement does not demonstrate the need for additional leasing by 1990."

The sad truth is that this comment by NPRC still applies today. If anything, it is more true now, having been vindicated by the program as it has operated thus far and by the overcapacity in the Western coal industry today.

I hate to rain on the parade, but there just isn't any need for a major new lease sale in the Powder River Region. I should repeat here that I am not questioning the need for short-term leases to avoid coal bypasses, or to keep existing mines operating.

NPRC Comments on the Powder River 1982 Coal Lease Targets

The need for these should be looked at on a case by case basis.

I realize that the Regional Coal Team is not responsible for DOE's figures. Those figures are the result of an inherent problem in the Federal Coal Management Program, a problem NPRC criticized from the beginning. Our comment fell on deaf ears. So now the Regional Coal Team is stuck with DOE's figures, which come right out of Lewis Carrol.

But the Coal Team can recommend changes in those figures. The Coal Team can also recommend that the Department of Energy come out to the West and defend its own assumptions and figures, which no one seems to like. The Coal Team can advise the Secretary that the production goals are way out of bounds.

I also realize that the Coal Team is under a lot of pressure to lease from industry. I urge you to take the arguments of the coal industry with a grain of salt, in view of their extensive existing leases, largely undeveloped, and in view of the overcapacity in this region. That overcapacity will get worse before it gets better. There simply isn't any hurry to lease.

I'd like to read to you part of an exchange between Senator John Melcher and Assistant Secretary Guy Martin during an Oversight Hearing on the Federal Coal Leasing Program, held by a subcommittee of the Senate Committee on Energy and Natural Resources in June of last year:

From the Transcript of Proceedings, Oversight Hearing on the Federal Coal Leasing Program, Committee on Energy and Natural Resources, Subcommittee on Energy Resources and Materials Production, June 12, 1980

Senator Melcher. Guy (Martin)*, if I understand your testimony properly, 99 leases have coal production on them; is that correct? Ninety-nine federal leases have coal production on them; is that correct? And, there are about 400 and some others?

Mr. Martin. That's right.

Senator Melcher. Have you done anything about what you are going to do with the 400 and some leases?

Mr. Martin. I think the first thing to say about the additional leases which cover a tremendous volume of coal is that the main reason that they are not under production at the present time, probably relates to a demand for the reserves that they would produce.

There are a number of other reasons all the way from not having sufficient holdings to develop, in some cases regulatory problems; but the major problem is demand for the resource.

In terms of diligence...

Sen. Melcher. The major problem is what?

Mr. Martin. Demand.

Sen. Melcher. There's no demand?

Mr. Martin. That's right. There is not a market for the coal on those leases. Again, that varies from place to place, but that's the largest general problem.

Sen. Melcher. I want to take it from that answer that nobody is barking at you and saying, "I want to lease and I want to develop that coal?"

Mr. Martin. No, Sir. That's why I say, there is obviously a large number of reasons why some aren't being developed, but the largest reason by far is the lack of demand in the market.

Sen. Melcher. How many of those -- is that half of them?

Mr. Martin. More than half.

Sen. Melcher. Sixty percent of them are not barking at you because there is no demand for the coal. They don't want to develop it.

Mr. Martin. They don't have the capability to sell it. I was just told that there were 300 for which there hasn't been a mining plan submitted.

Sen. Melcher. Three hundred plus, or 300 plus?

Mr. Martin. Around 300...

*Assistant Secretary of the Interior for Land and Water

NPRC Comments on the Powder River 1982 Coal Lease Targets

Under the circumstances, I think that the sensible thing for the Coal Team to do is to send a letter along the following lines to the Secretary of the Interior:

Dear Mr. Secretary:

The Powder River Regional Coal Team makes these recommendations concerning the planned 1982 Powder River Regional Coal Lease Sale.

If we hold a lease sale, and someone bids, the coal will sit in the ground because no one will buy it. We have had problems getting ready for the lease sale, partly because land use planning was done in such haste that much of it is not an adequate basis for a coal lease sale. The mines existing and planned in this area already insure an incredible overcapacity in the Powder River Region coal industry for the foreseeable future. Leasing more coal on top of the billions of tons already under lease and awaiting mining plans will only erode competition in the Western coal industry and periodic unemployment in the region's existing mines. We do not know what the cost to the existing agricultural industry from such leasing might be.

In the interests of keeping a healthy coal industry, protecting the agricultural industry, and improving the Interior Deparment's planning efforts, we recommend holding off this coal lease sale for a couple of years.

Sincerely,

The Powder River Regional

Coal Team

NPRC Comments, NOTES

1. The notice says that we are to comment on the Secretary's tentative regional target of 776 million tons, which has been adjusted. It was adjusted to meet a draft DOE production goal of 438 million tons per year in 1990. (The 'high' projection). Since then, DOE has produced a revised draft calling for 412.2 million tons per year under the high projection scenario. It is unclear which of these figures should be commented on.

The way the federal register notice reads, the adjustment resulted in "additional production of up to 92 million tons per year" over and above the 776 million ton 'tentative target' of inplace coal. But the calculation which follows seems to indicate that the 92 million ton per year figure replaces the 776 million ton in-place figure. Again, it is impossible to know what to comment on.

If the coal program were being properly followed, these problems would not exist. The way it is supposed to work is,

1. DOE drafts goals.
2. The Interior Secretary informs DOE of varios Interior Department responsibilities which may affect their capability to meet those goals.
3. DOE comes up with final goals.
4. The Regional Coal Team gets a leasing target from the Secretary, and adjusts it bases on, among other things, public comment.

The fact that DOE's final goals are not yet finished has thrown the whole public involvement in setting coal lease targets into disarray.

2. New York Times, 5/18/80
3. Ibid.
4. Ibid.

No layoffs anticipated at newly opened mine

By LINDA LINN
Gazette Sheridan Bureau

SHERIDAN, Wyo. — Officials of Northern Energy Resource Company said Thursday there are no plans to lay off personnel this fall if a temporary slow-down in coal shipments to their Houston, Texas, utility customer is necessary.

NERCO owns and operates the newly-opened Spring Creek Coal Mine north of Sheridan in Montana, and it has contracted the largest sale of coal in the west to Houston Lighting and Power.

NERCO officers said they would meet this week in Houston to discuss "various technical questions relating to the start-up of the combined facilities."

NERCO said options to be discussed include a possible rescheduling of the coal delivery schedule for Spring Creek Mine, but emphasized that no decisions have been made to alter the current production schedule at the mine.

Spring Creek now produces 500,000 tons monthly for the utility and plans to produce a total of 5 million tons of coal this year, 6 million tons next year and 7 million tons annually thereafter.

NERCO's Bob Deurloo said problems normally associated with the start-up of any new plant are being experienced at the Houston facility.

He stressed that repairs or corrections, if necessary, might temporarily reduce the facility's need for coal, but added that the slow down would be for a short time. He said no decision has been reached to slow production, but that NERCO and utility officials are discussing the situation.

If there is a slow-down because of decreased demand from Houston, Deurloo says Spring Creek employees will be shifted during the interim to other necessary jobs at the mine.

"It's premature to even say we might have a slow-down, but if we do we will probably just remove overburden at a faster rate and do some other mine projects we need done."

Deurloo said employees and the community of Sheridan have no reason to fear that NERCO operations might halt and cited a firm committment to the opening of regional NERCO offices in Sheridan and a 25-year contract for the Spring Creek Coal.

Coal leasing proposal is slammed

Two ranchers, affiliated with the Northern Plains Resource Council, have attacked the Bureau of Land Management's plan to lease 1.5 billion tons of coal in the Powder River area of Montana and Wyoming.

"The...proposal is a scandal and its analysis of the impacts a whitewash," Rosebud County rancher Wallace McRae charged Friday.

The Bureau recently released a draft report on the impact of the proposed lease sale for the Powder River region. "The report's findings that leasing 1.5 billion tons of federal coal would cause less impact than not leasing at all is ludicrous," McRae said.

"This proposal would mean six large new strip mines, each the size of Colstrip's Western Energy," said McRae. "The idea that this would be less damaging than no leasing is absurd.

"Under pressure from Secretary of the Interior James Watt, the Regional Coal Team has doubled its original 776 million ton lease target — a target that could not be justified in the first place. The new target even exceeds the Department of Energy's highest estimated demand projections and those are widely recognized as inflated."

"They are not just talking about mines when they propose this lease sale," said Gary Ochsner, spokesman for a ranchers' group on the Tongue River. "They're also talking about one-hundred miles of railroad running through the middle of nearly every ranch on the lower half of the Tongue River. To say that is 'less impact' is just nonsense."

"The mines we already have are producing about half of what they are designed for, and the government has already leased billions of tons of coal in the area for which there is no demand," McRae said.

"Leasing an additional 1.5 billion tons is not just too much, it is an energy company boondoggle. The Department of Interior will be giving it away. There's no market for it, so the energy companies will just sit on it. They will profit through speculation — and the public will be the losers."

McRae is a member of the Rosebud Protective Association, an affiliate of the Northern Plains Resource Council. Ochsner is president of Tongue River Agricultural Protective Association, also affiliated with NPRC.

11-565 O - 82 - 10

TESTOMONY OF WALTER ARCHER
POWDER RIVER COAL LEASE SALE DRAFT ENVIRONMENTAL IMPACT STATEMENT

August 20, 1981
Broadus, Montana

I am Walter Archer. I ranch near Olive, Montana, in Powder River County. I am President of the Powder River Protective Association, an organization of ranchers and farmers in Powder River County which is affiliated with the Northern Plains Resource Council.

I would first like to address some comments to the leasing target which the Secretary has set at 1.5 BILLION tons. I had occasion to speak to this issue several months ago when the target was 776 million tons. I am resubmitting the statement I made at that time. But I will also summarize some of those points on behalf of those here today and in the additional context of the doubling of an already unjustifiably high level.

The coal lease sale in the Powder River Basin in 1982 can only be likened to "sending coal to Newcastle." The coal industry in the region is plagued with excess capacity already with miners out of work at several area mines. The president of Westmoreland has stated publicly that his Absaloka Mine on Sarpy Creek could double its production if only they could find someone to buy the coal! A 15 million ton capacity mine recently opened in Wyoming can sell less than one-third of that coal. Montana's newest mine, Spring Creek, has approximately three million tons of capacity for which it is seeking a customer. Workers have been laid off at Western Energy's Colstrip mine and at Decker.

That is the situation today. What about ten years from now? Is the sale needed for 1991? Every indication is NO. There are literally billions of tons of already-leased undeveloped federal coal in the Powder River Basin. Of this, 2.9 BILLION tons of reserves have favorable development potential. The potential capacity of those existing leases, preference right lease applications and nonfederal mines in the West far exceeds the likely range of demand for coal over the next 10-20 years.

We now see the Department of Interior in Washington, DC, advocating that diligent development requirements for federal lessees be weakened or entirely dropped. It is little wonder that as the 1.5 BILLION Powder River coal sale approaches, Interior should seek to save itself the embarrassment of having to cancel leases that are not being developed because there is no market!

The Secretary this year actually doubled the tonnage to be offered from the Basin. He is now hinting at actually raising that target by an additional BILLION tons!

One of the most apalling things about the Draft Environmental Impact Statement is that it does not even attempt to justify a lease sale of the size contemplated! But then any credible assessment of the market, the over-capacity of existing mines, and the tremendous production potential from existing, undeveloped leases leads to only one, obvious conclusion: The lease sale cannot be justified.

This fundamental flaw in the Draft EIS is compounded throughout the document by an analysis of impacts that is superficial, oftentimes incomplete and in some cases ridiculous.

For example, the conclusion that leasing 1.5 BILLION tons of coal (and opening six major new mines therefrom) would somehow cause less impacts than not leasing 1.5 billion tons is nonsensical. The document never justifies this ridiculous conclusion. Like the coal target, it defies rational explanation.

Broadus and Ashland are the two Montana communities most directly affected. Both communities would be hit hard with boom-type impacts. The EIS, however, overlooks entirely the capital costs of new facilities such as roads, schools, and hospitals, assuming that per capita expenditures will be the same in 1990 as today. In every other boom town in the West costs have skyrocketed because of the need for building new facilities. Montana has a coal tax that would provide some help, but even with that the local taxpayer, on the average picks up 68% of the tab for coal tax supported projects.

The EIS does not account for the impacts on local government budgets of mines that may open without federal leases in this area.

Having left out major components of the equation, the EIS happily projects a budget surplus in Broadus. Such happy surpluses have been predicted in the past for boom communities - but the fact is that there has never been a boomtown with budget surpluses in the region.

In the areas of groundwater impacts, agricultural impacts, water quality impacts, and land use impacts the document is similarly rosy; and its assumptions (where those are described) are equally deficient!

If ever there was a document that needed to go back to the drawing board, this is it. As I have already pointed out, the need for the sale simply isn't there and thus there is time to at least take an honest and informed look at what we're trading off in these communities, in agricultural productivity, in economic stability and in our future before any lease sale is held.

Statement of Charlie Yarger to the Fort Union Regional Coal Team
May 6, 1981
Miles City, Montana

MY NAME IS CHARLIE YARGER. I FARM IN McCONE COUNTY, AND IA AM A MEMBER OF THE McCONE AGRICULTURAL PROTECTION ORGANIZATION.

I'D LIKE TO TALK ABOUT SOME OF THE ARGUMENTS WE'VE BEEN HEARING FOR SETTING HIGH LEASE TARGETS. THESE ARGUMENTS FALL INTO TWO CATEGORIES. FIRST, THERE IS THE ARGUMENT OF THE "PRIVATE ENTERPRISE WITH PUBLIC RESOURCES" CROWD IN THE COAL INDUSTRY. THEY FEEL THAT PRIVATE INDUSTRY MUST BE UNSHACKLED FROM ALL OF THE RESTRICTIONS ON THEIR NATURAL RIGHT TO THE PUBLIC'S COAL. THIS GROUP HAS IN COMMON WITH PEOPLE ON ALL SIDES OF THE LEASING QUESTION AN INTENSE DISLIKE OF DOE'S PRODUCTION GOALS.

AND THERE ARE THE ARGUMENTS OF THE "COMPETITION THROUGH MONOPOLY" CROWD IN THE FEDERAL BUREAUCRACY. THIS GROUP, BECAUSE OF IGNORANCE, DUPLICITY, OR BOTH, BELIEVES THAT LEASING MORE COAL TO THE MAJOR OIL COMPANIES AND OTHERS WHO HOLD EXISTING FEDERAL LEASES WILL SOMEHOW INCREASE COMPETITION IN THE COAL INDUSTRY. THEY ALSO BELIEVE THAT THE SAME FOLKS WHO CAN MAINTAIN HIGH GASOLINE PRICES IN THE FACE OF A TREMENDOUS GLUT OF OIL WILL BE INCLINED TO LOWER COAL PRICES IF WE ONLY LEASE THEM ENOUGH FEDERAL COAL.

BOTH OF THESE GROUPS MANAGE TO CONSTRUCT ARGUMENTS FOR VASTLY EXPANDED FEDERAL LEASING WITHOUT ONCE MENTIONING THE

REASON FOR THE PRESENT FORM OF THE COAL LEASING PROGRAM. WHO REMEMBERS THE COAL LEASING MORATORIUM, OR THE MASSIVE LEASING AND DECLINING FEDERAL COAL PRODUCTION WHICH LED UP TO IT? DOES ANYONE, BY THE REMOTEST CHANCE, REMEMBER NRDC VERSUS HUGHES?

BOTH GROUPS ALSO MANAGE TO MAKE THEIR ARGUMENTS WHILE COMPLETELY IGNORING THE FACT THAT THEY ARE TALKING ABOUT PUBLICALLY-OWNED RESOURCES. THE INDUSTRY GROUP SEEMS TO FEEL THAT IT IS THEIR COAL, AS IF THEY HAD AN INALIENABLE RIGHT TO IT WHICH HAS BEEN DENIED THEM BY INTERIOR'S OBSTRUCTIVE LEASING POLICIES.

MEANWHILE, THE BUREAUCRACY GROUP IGNORES THE PUBLIC TRUST VESTED IN THEM AS TRUSTEES OF THE NATION'S RESOURCES. THEY BURY THEIR HEADS IN THE SAME SAND IN WHICH THE RAMPANT LEASERS OF THE 1960'S WERE BURIED.

FINALLY, BOTH GROUPS MANAGE TO ARGUE FOR HUGE LEASE SALES WITHOUT EVER DISCUSSING WHETHER THERE REALLY IS DEMAND FOR THE COAL. YOU WILL NEVER HEAR THEM TALK ABOUT "ELECTRICITY DEMAND GROWTH RATES" OR OTHER SUCH ESOTERIC SUBJECTS. THE ARGUMENTS REMAIN LIMITED TO THE PHRASES "FREE ENTERPRISE","COMPETITION", AND "THE DANGERS OF UNDERLEASING".

AS YOU MAY KNOW, SECRETARY WATT HAS CALLED FOR RECOMMENDATIONS TO ELIMINATE "EXCESSIVE, BURDENSOME, AND COUNTERPRODUCTIVE

REGULATIONS". MANY OF THE RESPONSES MR. WATT HAS RECEIVED FROM THE COAL INDUSTRY CONCERN PRODUCTION GOALS AND THE COAL LEASE TARGET SETTING PROCESS. HERE IS WHAT ARCO HAD TO SAY:

> We have serious concerns about the consequence of the Federal government having the exclusive power to decide when, where, and how much coal should be produced from the various coal production regions. The history of our country indicates to us that the free market forces provide the best determinants of when new mines open and at what rate coal will enter the market place.
>
> The primacy of government in this area to the practical exclusion of industry, and ultimately the consumer, is truly unnecessary, counterproductive and detrimental to establishing a competitive coal industry.

THIS IS AN INTERESTING STATEMENT, COMING FROM ONE OF THE LARGEST HOLDERS OF UNPRODUCTIVE FEDERAL COAL LEASES IN THE COUNTRY. NOTICE THAT ARCO NEVER ONCE MENTIONS WHOSE COAL IT IS THEY WOULD LIKE TO SEE PUT ON THE "FREE MARKET". FOR THE RECORD, IT BELONGS TO THE PUBLIC, WHO HAVE A RIGHT TO FAIR MARKET VALUE FOR THE COAL. INDISCRIMINATE OVERLEASING WILL RESULT IN MINIMUM BIDS FOR THE COAL, AND NOT A FAIR RETURN TO THE PUBLIC.

NOW, PART OF THE INDUSTRY ARGUMENT FOR LEASING AS MUCH AS THEY WANT, INSTEAD OF ONLY AS MUCH AS IS NEEDED, IS THAT "OVERLEASING" WON'T HURT ANYONE BECAUSE OF DILIGENT DEVELOPMENT REQUIREMENTS. "LET US TAKE THE RISK", THEY SAY. SO WHAT DOES ARCO HAVE TO SAY ABOUT THE DILIGENT DEVELOPMENT REQUIREMENTS?

THEY WANT THEM RELAXED. FOR LEASES ISSUED BEFORE 1976,

ARCO WANTS TO ELIMINATE THEM ENTIRELY. I QUOTE AGAIN:

> The concern expressed by previous DOI officials that there will be numerous, non-producing pre-1976 leases in the absence of the diligent development standard is probably unfounded.

ARCO DOES NOT EXPLAIN THE REASON FOR THEIR FAITH. BUT SINCE THEIR STILL ARE HUNDREDS OF NON-PRODUCING PRE-1976 LEASES EVEN WITH DILIGENT DEVELOPMENT STANDARDS, I CAN ONLY CONCLUDE THAT THEIR FAITH IS MISPLACED.

NEXT WE HAVE SANTA FE INDUSTRIES ON THE CURRENT METHOD OF SETTING COAL TARGETS. THEY HAVE A SUGGESTION:

> A more timely and efficient procedure for development of federal coal resources would place reliance on the market instead of Interior's artificial estimates of demand. Santa Fe believes that the goals and targets mandated by statute can be made more flexible and permit industry to lease and develop coal when and where necessary...

WHAT THEY ARE SAYING IS THAT THE PUBLIC HAS NO RIGHT TO HAVE ITS PUBLIC SERVANTS ADMINISTER PUBLIC RESOURCES FOR THE BENEFIT OF THE TREASURY AND THE GENERAL GOOD. INSTEAD, PUBLIC RESOURCES SHOULD BE HANDED OVER TO PRIVATE INDUSTRY, FOR THEIR PROFIT, IN THAT GREAT FREE MARKET WHICH HAS GIVEN US INCREASING ENERGY SURPLUSES AND RISING ENERGY PRICES AT THE SAME TIME.

AND HERE IS MOBIL, WHICH OUGHT TO KNOW ABOUT FREE ENTERPRISE: "THESE GOVERNMENTALLY SET ESTIMATES OF DEMAND AND LEASING GOALS IGNORE THE PRIVATE MARKET PLACE..." PRESUMABLY, MOBIL WOULD PREFER THAT INTERIOR IGNORE THE 18 BILLION TONS OF COAL ALREADY

UNDER LEASE, UNDEVELOPED, WHICH WERE HANDED OVER TO THE PRIVATE MARKET PLACE IN THE 1960'S.

MOBIL'S SOLUTION TO THE PROBLEM SHOULD SOUND FAMILIAR BY NOW:

> One obvious means of eliminating this excessive governmental control would be for the Department to respond to industry expressions of interest for leasing. Market forces and the private sector should determine the location, amount, and timing of federal leasing rather than Government projections based upon incomplete factual data and an untried computer model...And, as recommended by the Department of Justice, leasing targets should far exceed estimated demand so as to maximize competition and ensure adequate supplies if demand projections are underestimated.

FOR THOSE WHO HAVEN'T ALREADY GUESSED, MOBIL SUGGESTED DISMANTLING THE DUE DILIGENCE REQUIREMENTS A LITTLE LATER IN THEIR LETTER TO THE SECRETARY.

I URGE THE REGIONAL COAL TEAM TO IGNORE THIS MORASS OF SELF-SERVING ARGUMENTS. I'D LIKE TO REMIND YOU OF THE 18 BILLION TONS OF COAL UNDER LEASE, LARGELY UNDEVELOPED. I'D ALSO LIKE TO REMIND YOU OF THE EXTREMELY SOFT COAL MARKET, A CONDITION THAT IS PARTICULARLY EVIDENT IN THE NORTHERN GREAT PLAINS.

WE ALREADY <u>HAVE</u> OVERLEASING. WE ALREADY HAVE A HUGE OVERCAPACITY. IT HASN'T LED TO MORE COMPETITION. IT HAS LED TO SPECULATION.

THE COAL INDUSTRY PROMISES THAT THIS WON'T BE SO, IF WE

LEASE COAL WHERE THEY WANT IT. THEY PROMISE THAT DUE DILIGENCE REQUIREMENTS WILL PREVENT THAT FROM HAPPENING. AFTER WHICH THEY TURN AROUND AND CALL FOR THE RELAXATION OR ELIMINATION OF DUE DILIGENCE.

THE COAL INDUSTRY ISN'T ALONE IN REPEATING THE SIMPLISTIC NOTION THAT "THE SOCIAL COSTS OF OVERLEASING ARE LESS THAN THE COSTS OF UNDERLEASING." AMONG THE PUBLIC AGENCIES WHICH HAVE SAID THIS ARE THE COUNCIL ON WAGE AND PRICE STABILITY, THE DEPARTMENT OF JUSTICE, THE DEPARTMENT OF ENERGY, AND VARIOUS CONGRESSIONAL RESEARCH OUTFITS.

THE LOGIC ESCAPES ME. IN THE FIRST PLACE, NO ONE HAS EVER SHOWN THAT THERE IS EVEN A <u>POSSIBILITY</u> OF UNDERLEASING. HOW CAN THERE BE A SHORTAGE OF LEASED FEDERAL COAL WITH 18 BILLION TONS OF IT SITTING IDLE, WAITING FOR THE MARKET TO PICK UP? ALTHOUGH THESE LEASES ARE ALWAYS REFERRED TO, BY THOSE WHO ENCOURAGE OVERLEASING, IN THE PAST TENSE, AS IF THEY HAD DISAPPEARED, THEY <u>DO</u> STILL EXIST. VERY FEW OF THE LEASES HAVE BEEN DEVELOPED, AND NONE HAS BEEN CANCELLED. WE CAN TALK ABOUT FREE MARKETS TILL WE'RE BLUE IN THE FACE, BUT THE LEASES WILL NOT GO AWAY.

IN THE SECOND PLACE, IT TAKES A PRETTY NAIEVE PERSON TO BELIEVE THAT IF INTERIOR DOES OVERLEASE, AND THE COAL ISN'T DEVELOPED, THEN THE LESSEES WILL SIMPLY HAND IT ALL BACK WITHOUT

CHALLENGING THE DUE DILIGENCE REQUIREMENTS. NAIEVE, AND BLIND AS WELL, SINCE DUE DILIGENCE IS ALREADY BEING CHALLENGED.

THE COST OF OVERLEASING IS FAR GREATER THAN THE COST OF UNDERLEASING. THE CHANCES OF UNDERLEASING ARE PRACTICALLY NIL. AND THE RESULT OF OVERLEASING WOULD BE TO HAND OVER THE PUBLIC'S RESOURCES TO PRIVATE INTERESTS--LOCK, STOCK, AND COAL SEAM--AT ROCK BOTTOM PRICES, FOR SPECULATIVE PROFIT.

SO I URGE YOU TO REJECT THE ARGUMENTS FOR A LARGE LEASE SALE. IT WILL BENEFIT NOT THE CONSUMER, OR THE COUNTRY, BUT RATHER THE SPECULATORS.

I'M AFRAID, THOUGH, THAT IF YOU RECOMMEND A LOGICALLY, REASONABLY SIZED LEASE SALE, YOUR RECOMMENDATION WILL BE IGNORED. THE PRESSURE BEING EXERTED BY THOSE WHO WANT TO LEASE HAS ALREADY LED TO HINTS FROM THE INTERIOR DEPARTMENT THAT LEASING TO MEET INDUSTRY NEED WILL REPLACE LEASING TO MEET PRODUCTION GOALS. WHILE SUCH A CHANGE COULDN'T BE IMPLEMENTED FOR THE FORT UNION COAL LEASE SALE, THE SECRETARY COULD RECOMMEND A LEASE TARGET SO LARGE AS TO AMOUNT TO THE SAME THING, FOR ALL PRACTICAL PURPOSES. AS MOBIL SAID, THE DEPARTMENT OF JUSTICE HAS ALREADY RECOMMENDED THIS.

IN THE FACE OF THIS, THE FORT UNION REGIONAL COAL TEAM HAS AN OBLIGATION TO WRITE TO THE SECRETARY OF THE INTERIOR AND DEFEND THE PRESENT PROCESS. EXPLAIN TO HIM THAT THERE IS A REAL

AND JUSTIFIED FEAR THAT EXCESSIVE LEASING WILL LEAD TO SPECULATION RATHER THAN PRODUCTION, AS IT DID BEFORE THE MORATORIUM.

DEFEND THE RIGHTS OF THE STATES OF MONTANA AND NORTH DAKOTA, WHOSE PRESENT VOICE IN THE PROCESS WOULD BE MUFFLED BY THE CHANGES IN THE COAL LEASING PROGRAM NOW UNDER CONSIDERATION IN WASHINGTON.

AND SEND THE LETTER NOW, WHILE THE INTERIOR DEPARTMENT IS STILL REVIEWING THE RECOMMENDATIONS FOR CHANGE. IF YOU DON'T, I'M AFRAID THAT THE RECOMMENDATIONS OF THE FORT UNION COAL TEAM WON'T BE WORTH THE PAPER THEY ARE WRITTEN ON.

IN REPLY REFER TO

1601 (961)

United States Department of the Interior

BUREAU OF LAND MANAGEMENT
222 North 32nd Street
P.O. Box 30157
Billings, Montana 59107

AUG 0 6 1980

Certified - Return Receipt Requested

Mr. James A. Patten
Staff Attorney, Northern Plains
Resource Council
419 Stapleton Building
Billings, Montana 59101

Dear Mr. Patten:

We have reviewed the Northern Plains Resource Council's protest dated July 18, 1980, of the Powder River Resource Area Management Framework Plan (MFP) Amendments. The Powder River MFP Amendment documents, dated June 1980, also included analysis of hearing responses concerning the MFP Update Report dated July 1979. The basis for your protest are the regulations for planning, 43 CFR 1601.6-1. The 43 CFR 1601 "Public Land and Resources; Planning System Regulation" became effective September 6, 1979, and are not applicable to the Powder River Resource Area MFP Update Report of July 1979. Therefore, this portion of your protest has no standing. However, prior to the implementation of this update, provisions were made under the federal coal management regulations 43 CFR 3420.2-4 dated July 19, 1979, to conduct a hearing to solicit input from "any person who is or may be adversely affected by adoption of the plan." The hearing was held on May 20, 1980, at the Miles City Community College, Miles City, Montana. The comments and additional information received were analyzed and appropriate changes made, as summarized in Section 6-10 of the above-referenced June 1980 publication. As a consequence, the Powder River Update decisions of June 1979, as modified by analysis of the additional information received and the hearing comments, became effective on June 6, 1980, the date I concurred with the June 1980 "Amendment" document.

The following issues were submitted concerning your protest of the 1980 Powder River Resource Area Management Framework Plan Amendments:

"1. The failure to address the impacts of the Amendment decisions on the agricultural resources of the planning areas;

2. The inadequacy and limited scope of the environmental analysis;

3. The Surface Owner Consultation letter which was drafted so as to achieve a biased result;

4. The Amendment does not constitute a 'Comprehensive Land Plan;'

5. The Amendment (excluding the initial MFP and Update) is not authorized by the planning regulations;

6. Inadequately implemented public participation; and

7. Inadequate data for the application of the unsuitability criteria."

After Careful study and consideration of the issues presented in your protest my findings are to affirm the decisions made by the Miles City District in the Powder River Resource Area MFP Amendments. Your protest is therefore denied. The basis and rationale for this decison follows.

1. Failure to address impacts on the area's agricultural resources:

There is no question but that the impacts of potential coal leasing on agricultural, social and environmental values must be considered before any decision to lease is made. Our new coal management program is a multi-level decision process and will address these issues. These land use plans, in this case the Coalwood, Decker-Birney and South Rosebud MFPs, as updated and amended, identify lands acceptable for further consideration for leasing. They do not identify which tracts will actually be leased, nor do they identify the need for leasing any of the areas that have been considered. Where private surface and federal minerals are involved, this first level of the decision process involves the application of the unsuitability criteria and considers surface owner views. They may also make other resource tradeoffs where there are unique site specific values clearly superior to coal. This was done in the original plans. Agriculture per se does not prohibit lands from being considered "acceptable for further consideration for leasing."

The second level of the decision process is the activity plan. In the activity plan, individual tracts will be identified as well as profiles developed on the physical characteristics of each of these tracts. The tracts will then be analyzed, ranked, and discussed in the Powder River Regional Environmental Impact Statement. The impact statement will consider the impacts on each specific tract, should mining occur, as well as the cumulative impacts of leasing different arrays of tracts to meet the established regional production target. During this process agricultural, social, economic, and environmental impacts will be assessed and displayed. Additional information collected during activity planning, (such as surface owner refusals to consent) will be used where applicable to further screen coal areas which came forward from the land use plan. The decision of whether to lease any of the identified tracts and, if so, what array of tracts to lease, is reserved for the Secretary of the

United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

SEP 3 0 1981

Mr. John D. Smillie
Northern Plains Resource Council
P.O. Box 886
Glendive, Montana 59330

Dear Mr. Smillie:

This is in response to your August 31, 1981, letter requesting the Powder River Region Coal Lease Target Issue Document. The document you requested was a simple analysis of potential alternatives for a target level provided for my review and consideration. It was an internal issue paper and as such is not available for public distribution.

Of greater significance in my decision on a preliminary target were the oral briefings by the lead agency Bureau of Land Management (BLM) and discussions with the State Governors and other agencies having interests in the region.

The draft and final EIS's for the regional leasing effort and the final regional lease sale decision document scheduled for early 1982 will reflect the analysis and rationale for a final leasing level. The results of the NEPA process of analysis, review, and comment in these other documents will influence the final decision on tracts to be considered for leasing. Site specific environmental analyses for individual tracts which have been considered are available from the BLM State Offices.

Thank you for your interest in the Federal coal management process.

Sincerely yours,

Garrey Carruthers
Assistant Secretary for
Land and Water Resources

NORTHERN PLAINS RESOURCE COUNCIL

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Mr. Garrey Carruthers
Assistant Secretary of the Interior
for Land and Water Resources
Office of the Secretary
United States Department of the Interior
Washington, D.C. 20240

October 9, 1981

Dear Mr. Carruthers:

Thank you for your letter of September 20 regarding the Powder River Regional Coal Lease Target Issue Document. I am writing again to request a copy of this document under the Freedom of Information Act. Please consider this letter as a request for release of the Powder River Region Coal Lease Target Issue Document in accordance with the FOI Act.

I would like to call your attention to several factors that indicate that the document in question cannot be merely an "internal issue paper" as your letter to me indicated. The Powder River Regional Coal Team has discussed this document on several occasions. At the May 21, 1981 meeting, it was indicated that the document was not available at that time because it was still in a draft form--not because it was an internal document. The minutes of that meeting (excerpts attached) further state:

> The SID is intended to be an objective document that sets out all the aspects of leasing, as well as the concerns of industry, public, environmental groups, States of Wyoming and Montana, BLM, and Indian groups. It is to include how many mines are anticipated and expected annual production. The recommendations of the RCT will be documented. It will give a historical perspective and projected coal demands.

It should be noted that the SID is the only document which explains the target recommended by the Regional Coal Team. It is the only document which explains the target chosen by your office. It is difficult to see how the final leasing target can be fully used as set out in 43 CFR 3420.3-3 of the Coal Management Program regulations without an explanation of the rationale behind the target. (See especially 3420.3-3b(1)--3420.3-3b(6) and 3420.3-3d).

Without such a document available to them, it is difficult to envision how the RCT could "thoroughly document" the alternative levels of leasing as set out in 3420.4-4c(3).

The RCT may recommend such alternative levels based on "revised regional coal demand"; but without an explanation of the level of demand used in selecting the preferred leasing target, it would obviously be impossible to "thoroughly document" the rationale for an alternative.

I would also like to point out that the draft EIS does not "reflect the analysis and rationale for a final leasing level", in contrast to the statement in your letter to me. No other public document contains such a rationale. The only available rationale is for a lease sale of 776 million tons, which is no longer the preferred alternative, nor is it an alternative evaluated in the EIS. The rationale for the Powder River Regional Coal Lease Target has never been made public.

It is clearly in the public interest for the Department of the Interior to make available the rationale and factual basis for your determination of the level of leasing that is necessary in the Powder River Region in 1982. I hope that you will reconsider your decision, and make the Issue Document available to the public.

Thank-you for your consideration of this request. If you do not reply within 30 days, I will consider the lack of response as a denial of this request under the Freedom of Information Act.

Sincerely,

John D. Smillie

John D. Smillie
NPRC Staff, Glendive

Attachments
cc: Tim Gallagher, Office of the Governor,
State of Montana
Mike Penfold, Director, Montana BLM
Warren White, Office of the Governor,
State of Wyoming
Robert Buffington, Chairman, Powder
River Regional Coal Team

Billings Gazette Star

Philosophies clash at BLM Powder River coal hearing

STAR 7/31/81

BILLINGS (AP) — Two Western philosophies clashed Thursday during the Bureau of Land Management's hearing on its plan to lease an additional 1.5 billion tons of coal on public lands in the Powder River Basin in Montana and Wyoming.

The only two views presented to the Department of Interior's Powder River Regional Coal Team represented the intense sentiments of a rancher farmer who operates on the prairie and those who wish to mine the coal buried beneath that prairie.

A recently completed draft environmental impact statement on the area concurs with the Department of Energy and regional coal team's recommendation that the best alternative is to lease in mid 1982 about 1½ billion tons of coal in 14 tracts with production of about 50 million tons a year.

That's not enough, according to Martin Holmes of Burlington Northern's coal and mineral subsidiary. BN itself is one the largest owners of sub surface coal reserves.

It's too much, countered Bill Mackay Jr., a Roscoe rancher speaking for the Northern Plains Resource Council.

Holmes told the coal panel "enough unobligated coal reserves must be made available to allow the marketplace to function properly to supply new demands by the least expensive reserves.

"We would argue that to allow the market to function properly federal leasing levels should be set even higher than those needed to meet the DOE high estimate," he said. "The economic impacts of under-leasing could be substantial. We must not lose track of the fact that only coal demanded by the marketplace will be produced."

Mackay charged the coal-lease sale is "unnecessary. There simply isn't any demand for the coal BLM proposes to lease," he said, "and there won't be any demand for 20 years or more."

"A coal lease sale now would be an unproductive give-away, an invitation to energy companies to speculate with public coal at the expense of the taxpayer," Mackay claimed. "It will not advance our country's goal of reaching energy self-sufficiency."

Citing recent layoffs at Montana strip mines and "billions of tons in existing, non producing leases," Mackay accused Interior Secretary James Watt of wanting to "add to past mismanagement. The EIS is wholly inadequate but that in itself is not surprising. What is surprising," he said, "is that the BLM would make such a transparent attempt to whitewash Mr. Watt's 1.5 billion ton give-away."

forecast

Sunny and quite warm Saturday. Low tonight 58, high Saturday 92. Chance of precipitation 10 percent tonight, 0 percent Saturday.

Sparks fly at coal-leasing hearing

12/4/80

By LINDA LINN
Gazette Sheridan Bureau

SHERIDAN, Wyo. — Antagonists clashed Wednesay night at a Bureau of Land Management scoping hearing on coal leasing in the Powder River Basin.

Conservation spokesmen argued for no further coal leasing while coal development proponents said to "develop all the coal as soon as possible" and eliminate environmental impact statements.

The BLM scoping hearing, one of a number scheduled in the Powder River coal region, sought to gather public opinion on what should be included in an EIS being prepared for additional federal coal leasing.

Last night, Reed Zars, Powder River Basin Resource Council director, urged the BLM to consider the alternative of no additional leasing and said there was documented evidence of no need for the coal.

Zars said existing leases will handle the need for coal up to the year 2,000 and said it would be "an incredible waste" for the BLM to continue its new coal leasing study.

"I am sure you won't listen to us but if you continue to lease you will be economically jeopardizing those mines already in production," Zars said.

Zars sited several studies and coal analyses he said indicated there is no need for further leasing.

They are:

• A Department of Energy report issued in January 1980 that says the 1990 productive capacity of 710 million tons of coal for surveyed states is approximately 2½ times the reported contracts (excluding gasification) for that year and 3½ times the estimated 1979 production of 236 million tons.

• Guy Martin, the assistant secretary of land and water resources for the department of Interior, has testified to Sen. John Melcher, D-Mont., that 9% of federal coal leases are in production and that 400 others have no production.

The main reason, Martin says, is that there is no market for the coal in those leases.

• Wyoming Geological Survey spokesman Gary Glass has estimated that Wyoming coal production is 16 percent below its contracted tonnage and that the percentage will stay at that level for the next three to four years.

Glass also estimates that by 1990 only 63 percent of the coal mining capacity in Wyoming will be utilized.

As Zars concluded his arguments, he was harassed from the audience by a area rancher who asked Zars if he had $1 million like the Sierra Club types, if he had been to school and if he had to work.

"I can see by what you have to say that you haven't had much experience," the man said.

Zars also sparred with local attorney Bruce Badley. "Why does the PRBRC take such a stand when the lease money comes back to the University of Wyoming? Why deprive the state of Wyoming of the mineral lease money if these private companies want to buy the additional leases?" Badley challenged.

Zars responded that the PRBRC did not want to deprive the state of mineral royalty return but saw no reason for developing the coal reserves unless they were needed.

He again emphasized that over-leasing would jeopardize producing mines already experiencing problems with a soft coal market.

Badley, representing a group of industry representatives and a United Mine Worker union spokesman in one of the discussion groups at the BLM meeting, said his group favored developing all the lease coal as soon as possible "to ensure U.S. self sufficiency" and to eliminate costly environmental impact statements.

Other discussion groups at the meeting asked the BLM to consider "improving land instead of returning it to its existing state" when reclamation occurs on lease land and still another group said BLM mapping needed to be improved.

Coal production decline blamed on economy, weather, conservation

By CHARLES S. JOHNSON
Tribune Capitol Bureau

HELENA — The economy, weather and conservation combined forces to reduce Montana's coal production last year by nearly 2.5 million tons from 1979, the executive director of the Montana Coal Council says.

Some 29.98 million tons of coal were mined in Montana last year compared with 32.45 million tons in 1979, according to state statistics reprinted in the Coal Council's recent newsletter.

James Mockler, the industry group's executive director, said bad economic conditions contributed to the reduced mining.

"When they're not making cars in Detroit, they're not burning as much coal," he said.

Much of the Montana coal is shipped to the Midwest where it is burned to produce electricity.

A mild winter and cool summer also cut down on the utilities' demand for coal last year, he said. That allowed utilities to stockpile the coal and lower their needs.

Conservation efforts by consumers also lowered the electricity and coal demand, he said.

Mockler said contracts with Montana coal companies usually allow utilities buying large amounts of coal to increase or reduce their order every year by 10-15 percent of the agreed upon amount.

As a result, some of the companies cut back their orders last year.

Mockler was not optimistic about this year either.

"Production is not a hell of a lot better than last year and we have one more mine operating (at Spring Creek)," he said.

Through March, production this year was 200,000 tons higher than in 1980.

Mockler said he couldn't blame the decreased production last year on the state's 30 percent coal severance tax, which is the highest in the country. The large contracts were negotiated and signed before the tax went into effect in 1975.

But Mockler noted that no Montana coal mining companies have signed any large contracts since the 30 percent tax became law six years ago.

He contrasted Montana's situation with that in Wyoming, where production jumped from 71.5 million tons in 1979 to 94 million tons last year.

While Montana firms have not signed any new large contracts since passage of the 30 percent tax, Wyoming companies have negotiated future sales for 1.2 billion tons since late 1975, Mockler said.

Amounts of production from the major Montana mines last year were:

Decker Coal Co., 5.6 million tons; East Decker, 5.6 million tons; Western Energy, 10.4 million tons; Westmoreland Resources, 4.9 million tons, and Peabody, 2.96 million tons.

Figures for the smaller mines are:

Beartooth, 7,321 tons; Coal Creek, 64,398 tons; Divide, 8,571 tons; Knife River, 305,578 tons; PM, 11,189 tons, and Spring Creek, 118,660 tons.

5/24/81 GF Trib.

Opinions on leases disagree

Sheridan Press 12/4/80

By JERRI STEWART

Commentary reflected stands both for and against development of the Powder River Coal Region as the Bureau of Land Management conducted a hearing for public input last night at Sheridan College.

Glen Bessinger of Casper, chief of division planning for a BLM district office, heard opinions and accepted commentary from about 25 people divided into three discussion groups.

At issue are 26 tracts, 16 in eastern Wyoming and 10 in Montana totaling about 90,230 acres with 15¼ billion tons of coal reserves, being considered for possible federal coal leases.

The meeting was one of five scoping sessions in both states to gather public input for assessment in preparation of an environmental impact statement. Hearings have been in Douglas and Gillette, as well as in Sheridan, and are scheduled for Ashland and Colstrip in Montana to determine issues to be examined in depth, Bessinger said.

The first group polled at last night's "scoping" asked why land developed is not improved rather than returned to its original state.

Bruce Badley, Sheridan attorney attending the session as a representative of ranching interests, gave a three-part statement for his group:

—That all tracts be developed by bid lease sale as soon a possible to insure United States self-sufficiency.

—That environmental impact statements are redundant and be eliminated, with private enterprise and pure economics to govern the rate of development.

—That there is a need to produce synfuel from coal.

Reed Zars of the Powder River Basin Resources Council in Sheridan gave an oral report of another group's statement, commenting on a need for better maps of the area involved.

Zars also said no evidence presented by the BLM (which he termed a "coal leasing juggernaut") or by any other responsible agency showed a significant need of continuing development.

He quoted one statement as saying that, by 1990, only 60 percent of coal capacity will be utilized and said there is no need for federal coal leasing in Wyoming, calling the preparatory studies "an incredible waste of money and time."

With the current depressed coal market, existing mining operations are in jeopardy from over-leasing, Zars said.

Discussions following the statements included a question from Badley: "...why deprive the state of Wyoming the mineral money that comes back to it through leases?"

Another query concerned the financial investment of private companies and the use of minerals collateral for loans.

Bob Bennett of the BLM office in Miles City, Mont., explained that delinquent development within 10 years of a lease could result in a company paying a penalty or giving up the lease to another.

He said one step in the leasing process asks industry input, with an expression of interest and the criteria they have to meet to fulfill that interest.

Bessinger said the scoping indicates what issues of importance to concentrate on in preparation of the environmental impact statement process.

Bessinger said the schedule of action calls for a regional coal team to choose tracts for leasing in January, with assessment of an environmental impact statement on the lands selected due by April, and available for public comment in July.

The final draft of the statement is to be filed in December 1981, with protests to be heard for 30 days; and leasing to begin in April 1982.

In summing up the local hearing, Bessinger said, "I think they (those attending) spoke their minds. It was similar to the scoping in Gillette, a diverse group."

Billings Gazette - 7/26/81

No layoffs anticipated at newly opened mine

By LINDA LINN
Gazette Sheridan Bureau

SHERIDAN, Wyo. — Officials of Northern Energy Resource Company said Thursday there are no plans to lay off personnel this fall if a temporary slow-down in coal shipments to their Houston, Texas, utility customer is necessary.

NERCO owns and operates the newly-opened Spring Creek Coal Mine north of Sheridan in Montana, and it has contracted the largest sale of coal in the west to Houston Lighting and Power.

NERCO officers said they would meet this week in Houston to discuss "various technical questions relating to the start-up of the combined facilities."

NERCO said options to be discussed include a possible rescheduling of the coal delivery schedule for Spring Creek Mine, but emphasized that no decisions have been made to alter the current production schedule at the mine.

Spring Creek now produces 500,000 tons monthly for the utility and plans to produce a total of 5 million tons of coal this year, 6 million tons next year and 7 million tons annually thereafter.

NERCO's Bob Deurloo said problems normally associated with the start-up of any new plant are being experienced at the Houston facility.

He stressed that repairs or corrections, if necessary, might temporarily reduce the facility's need for coal, but added that the slow down would be for a short time. He said no decision has been reached to slow production, but that NERCO and utility officials are discussing the situation.

If there is a slow-down because of decreased demand from Houston, Deurloo says Spring Creek employees will be shifted during the interim to other necessary jobs at the mine.

"It's premature to even say we might have a slow-down, but if we do we will probably just remove overburden at a faster rate and do some other mine projects we need done."

Deurloo said employees and the community of Sheridan have no reason to fear that NERCO operations might halt and cited a firm committment to the opening of regional NERCO offices in Sheridan and a 25-year contract for the Spring Creek Coal.

Coal leasing proposal is slammed

Two ranchers, affiliated with the Northern Plains Resource Council, have attacked the Bureau of Land Management's plan to lease 1.5 billion tons of coal in the Powder River area of Montana and Wyoming.

"The...proposal is a scandal and its analysis of the impacts a whitewash," Rosebud County rancher Wallace McRae charged Friday.

The Bureau recently released a draft report on the impact of the proposed lease sale for the Powder River region. "The report's findings that leasing 1.5 billion tons of federal coal would cause less impact than not leasing at all is ludicrous," McRae said.

"This proposal would mean six large new strip mines, each the size of Colstrip's Western Energy," said McRae. "The idea that this would be less damaging than no leasing is absurd.

"Under pressure from Secretary of the Interior James Watt, the Regional Coal Team has doubled its original 776 million ton lease target — a target that could not be justified in the first place. The new target even exceeds the Department of Energy's highest estimated demand projections and those are widely recognized as inflated."

"They are not just talking about mines when they propose this lease sale," said Gary Ochsner, spokesman for a ranchers' group on the Tongue River. "They're also talking about one-hundred miles of railroad running through the middle of nearly every ranch on the lower half of the Tongue River. To say that is 'less impact' is just nonsense."

"The mines we already have are producing about half of what they are designed for, and the government has already leased billions of tons of coal in the area for which there is no demand," McRae said.

"Leasing an additional 1.5 billion tons is not just too much, it is an energy company boondoggle. The Department of Interior will be giving it away. There's no market for it, so the energy companies will just sit on it. They will profit through speculation — and the public will be the losers."

McRae is a member of the Rosebud Protective Association, an affiliate of the Northern Plains Resource Council. Ochsner is president of Tongue River Agricultural Protective Association, also affiliated with NPRC.

Billings Gazette

Friday
June 12, 1981
Billings, Montana 59103
98th Year, No. 41
Single Copy 25¢

Bad breaks deflate regional coal boom

By ROGER CLAWSON
Of The Gazette Staff

While the energy crisis continues, Montana and Wyoming coal — an energy source that dwarf's OPEC's oil reserves — is going begging.

Montana's coal sales slumped last year.

Wyoming coal mines are producing 60 million tons less than their capacity.

Montana coal companies have found no new major markets since October 1974, when the state's 30 percent coal severance tax was enacted.

While about 7 million to 9 million tons of excess annual coal production capacity exists in Montana, millions of dollars are being invested in six new mines which could, if opened, double Montana's ability to produce coal that cannot be sold.

Meanwhile, more than a dozen new coal mines are in the planning stages in the two states — mines that have yet to find buyers for their coal.

Industry experts blame a combination of factors for the softness of the current market for Western coal: good weather, location and politics.

Good weather — warm winters in the North where coal-generated electricity provides heat and mild summers in the South where power is used to run air conditioners — is blamed by the Montana Coal Council for the drop in Montana coal production from 32.4 million tons in 1979 to 27.1 million tons in 1980.

Location — mines located thousands of costly miles from the main markets — has cut into coal sales in Wyoming and Montana while rail rates soared.

But politics is the chief villain, according to industry spokesmen.

"New Environmental Protection Agency regulations have resulted in dirtier air, higher energy prices and a heavy blow to Western coal production," said Jack Ratchye, head of the coal-marketing firm Sage Coal Sales of Sheridan, Wyo.

Changes in the federal Clean Air Act in 1979 favor high-sulfur Eastern and Midwestern coal over the relatively "clean" low-sulfur Western coal, Ratchye said.

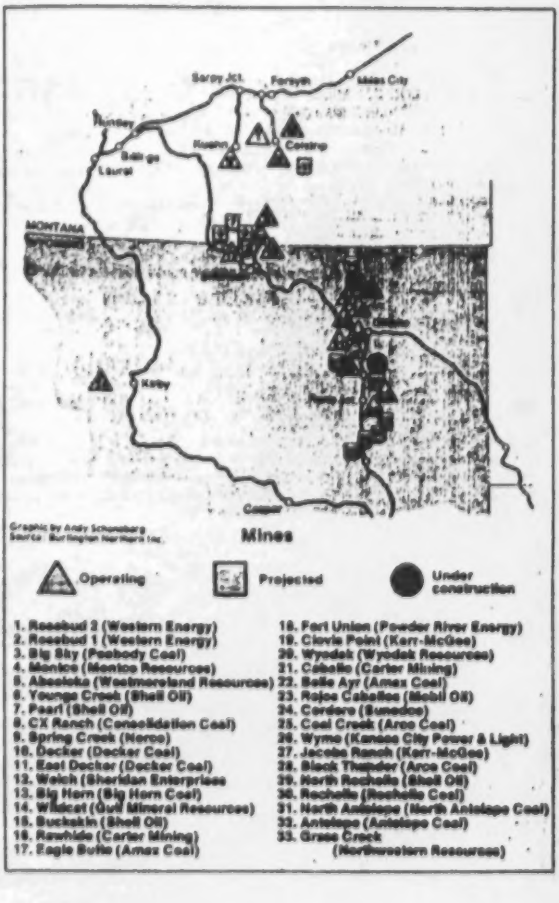
The amendments to the act required utilities to use the best available technology for pollution control." They also required utilities to take 90 percent of the sulfur out of the coal they burned.

This meant every coal-fired generating plant had to be equipped with costly scrubbers to take the sulfur dioxide out of their emissions.

It also meant dirtier air, according to Ratchye.

"You can take Eastern coal with 4 percent sulfur, remove 90 percent of that and still send 0.9 percent sulfur up the stack.

(More on Coal, Page 12A)



"But you can't burn Western coal with 0.8 percent sulfur unless you cut the sulfur dioxide emissions to 0.12 percent."

Thus, Western coal — which would produce cleaner air without scrubbers — loses its market advantage.

"If the utility east of the Mississippi has to invest in the pollution control equipment anyway, it might as well buy the nearby Eastern and Midwestern coal," Ratchye said.

Pat Stuart of the Montana Coal Council described the changes in the Clean Air Act as "economic — not environmental legislation."

She contends the intent of the changes was not to produce cleaner air but to give Midwestern-Eastern coal a market edge over cheaply produced Western coal — coal produced through relatively inexpensive strip-mining rather than costly deep-mining.

Ratchye noted, "The Sierra Club, which is fighting development of Western coal, teamed with the United Mine Workers of America (a union with the bulk of its membership in the East and Midwest) to pass this legislation."

Says Marion Loomis, executive vice president of the Wyoming Mining Association: "States more politically inclined to support their industry won."

Transportation is another problem, a problem linked to politics, the industry advocates say.

Moving a ton of coal to south Texas can cost up to $19 per ton. Texas utility representatives who purchased coal in Montana and Wyoming are now beginning to develop low-grade coal and lignite resources in their home state.

"Before the rail costs went up, it didn't pay them to consider these low-grade coal sources," Ratchye said. "Now they are looking very hard at them."

Utah and Colorado coal producers have an edge in moving coal to the Far East. "They are closer to the only coal port on the West Coast at Long Beach, California, and have competing rail service to the coast," Ratchye said.

Ratchye and others believe transportation costs could be cut through either railroad regulation or construction of coal slurry pipelines. But the current political climate does not make either possibility likely, they concede.

The last major coal sale in Montana was announced in June 1979 — a $1.7 billion sale from the Pacific Power and Light's Spring Creek Mine to Houston Power and Light.

But Stuart contends, "That was not a recent coal sale. That was merely a transfer of a contract from Shell Oil Company to PP&L. That sale had been made before 1975."

There have been recent coal sales in Wyoming, but, said Loomis "We are not going to be anywhere near the production projected for this state in the next few years."

Billings City Star 8/21/81

Powder River, Rosebud residents assail leasing

STAR PM 8/21

By PAUL JONAS
Star Staff Writer

BROADUS — A Bureau of Land Management draft environmental impact statement for coal leasing in the Powder River Basin was roundly criticized at a public hearing here Thursday night.

Several Rosebud and Powder River county residents attacked the Powder River Regional Coal Team's recommendation to lease 1.5 billion tons of federal coal in 14 tracts in Montana and Wyoming in mid 1982.

The residents claimed the proposed leasing is unnecessary because of the large number of existing federal mineral leases in the area which are undeveloped and because of possible negative impacts on agriculture and communities in the area.

Nick Golder, a Forsyth area rancher, disputed document assertions that strip-mine reclamation has so far been successful in the basin and that water in Rosebud Creek and Armells Creek would be minimally affected by the proposed leasing.

Golder noted the reclamation statement was based on a 1974 report on mining in the area and said little was known about reclamation at the time. He also took offense to a statement that area soils have good reclamation potential, saying no state reclamation bonds required on all Montana strip mines, have yet been released in the area.

He said the report's statement that salinity concentrations in basin streams would be increased only 1 percent to 4 percent is directly contradicted by the Montana Department of State Lands environmental impact statement covering the area. He said a highly alkaline slurry pond at the Rosebud Mine has already disrupted groundwater through leakage into Armells Creek.

He said a statement saying that people interviewed in the region favor coal development did not consider the views of those living on lands near the proposed mining areas.

"I suspect I can get a few thousand signatures of people who aren't very excited about it," Golder said.

Olive rancher Walter Archer, president of the Powder River Protective Association, said coal industry in the basin is already plagued with excess capacity. Archer said a 15-million-ton capacity mine that recently opened in Wyoming can sell less than one-third of that amount. Workers have been laid off at Western Energy's Colstrip mine and at the Decker mine, he added.

He said 2.9 billion tons of already leased but undeveloped federal coal in the basin has favorable development potential.

Archer disagreed with the report's statement that the leasing of the 1.5 billion tons would create fewer impacts than not leasing the coal.

"The document never justifies this ridiculous conclusion," he said. "Like the coal target, it defies rational explanation."

He and Broadus City Clerk Lonnie Beach said the document did not adequately consider impacts on the communities and small governmental units in the area.

The document predicts a budget surplus for Broadus if the leasing recommendation is approved.

"Such happy surpluses have been predicted in the past for boom communities, but the fact is that there has never been a boomtown with budget surpluses in the region," Archer said.

Mrs. Beach claimed the leasing alternatives discussed in the report were based on Wyoming state laws and not Montana's. The report estimated revenues received by local government entities based on coal production. But she said Montana's local government units do not receive direct percentages of federal mineral royalties.

She said she hopes the final EIS will address the difference in state laws concerning revenues and expenditures and the double tax structure which small incorporated Montana towns must maintain.

Mary Daniels, president of the Tri-County Ranchers Association and who ranches near Birney, said she thought the BLM had already decided to lease the 1.5 billion tons before the start of the public hearings.

She said she has been testifying at BLM strip-mine hearings for the past 10 years and said her comments, as well as others, have apparently been ignored.

"In all these years, it has not once been evidenced that our comments or written testimony ever influenced the BLM's decisions whatsoever," she said.

Mrs. Decker added that the leasing plan would deplete water and hinder agriculture. She said the report did not consider the proposed construction of the Tongue River Railroad's Otter Creek spur, which she said would result in land condemnations.

The president of the Coal Creek Mining Co., Clayton Tunnemaker, answered comments made by Westco and Burlington Northern representatives at a public hearing in Billings July 30 on the document.

He said the two want the Coal Creek tract declared unsuitable for small business leasing because of the BN's checkerboard ownholdings in the tract. The BLM has recommended that small business be given preference in leasing federal minerals in the tract.

BN mineral rights in the area have been leased to Peabody Coal Co., which would not be given leasing priority under the proposal because of the company's size.

Westco representative Steve Elliot interrupted at the Billings hearing that Tunnemaker's company may not qualify as a small business either because it is partly owned by Bill Farley, a shareholder in the Chicago White Sox baseball team.

But Tunnemaker said Farley is only one of 30 investors involved in the syndicate which owns the club.

"It is our opinion and our attorneys' opinion that Coal Creek Mining Co. is a small business and will be so qualified by the Small Business Administration," he said.

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March 19, 1982

James G. Watt, Secretary
U.S. Department of the Interior
Washington, D.C. 20240

Re: Powder River Regional Coal Sale

Dear Secretary Watt:

We represent the Northern Cheyenne Indian Tribe. The Tribe has asked us to advise you of its profound concern regarding the forthcoming Powder River Regional Coal Sale, scheduled for April 28, 1982. This letter describes that concern and requests a prompt meeting with you to discuss this matter in greater detail. It is the hope of the Tribe that such a direct discussion will convince you that the Tribe's concern is substantial and well founded and that the legal responsibilities of the Department of the Interior, to both the federal coal leasing program and the Northern Cheyenne Tribe, require that this matter be resolved. In such a meeting, we would hope to explore possible administrative solutions which, on the one hand, would address this matter effectively and, on the other hand, would be reasonable and prudent in light of the overall goals of the federal coal leasing program.

In short, the Tribe's concern stems principally from the fact that the legally required documents which purported to analyze the sociological and economic implications of the proposed lease sale -- most notably the Final Environmental Impact Statement and the supporting Tract Profiles -- do not contain <u>any</u> analysis of the socio-economic implications of the proposal with respect to the Northern Cheyenne Tribe. Indeed, the documents scarcely even mention the Tribe or its Reservation; it is almost as if the Tribe, the Reservation, the Reservation communities and the Tribal government did not exist. That is, the Tribe is not contending that there was inadequate analysis of its interests, or that the analytical conclusions reached were erroneous; rather, it is the position of the Tribe -- which, on simple reading of the FEIS and Tract Profiles is plainly not debatable -- that there was <u>no</u> consideration given to the socio-economic impacts of the proposed action on the Northern Cheyenne Tribe. The documents neither identify, discuss nor suggest mitigation of <u>any</u> sociological or economic impact of the proposed action on the Tribe.

It is difficult to comprehend how such an omission could have occurred. Enclosed is a sketch which depicts the Northern Cheyenne Reservation and that portion of the surrounding pattern of planned federal coal development revealed by the available documents. The Northern Cheyenne Reservation would occupy the geographic center of this development pattern; across its borders on three sides, large scale development of newly leased federal coal reserves would occur. We believe the sketch vividly illustrates the importance of analyzing the impacts that the currently proposed development may inflict on the Northern Cheyenne Tribe. Although none of this prospective development will occur within the Reservation, we believe it self-evident that it will produce serious cumulative impacts on the Reservation. For example, even the most cursory inspection reveals that the system of roads running east-west and north-south through the Reservation will serve as primary arterials between the proposed projects and major communities. Furthermore, the enclosed sketch does not depict all prospective coal development projects in the vicinity of the Reservation -- not shown are additional federal leasing tracts which may be offered in 1984 and 1986, and potential development tracts owned by the Crow Tribe which lie across the western border of the Reservation.

Although the FEIS does not reflect this, its preparers must have been aware that the Northern Cheyenne Reservation was substantially more than just a neighboring land mass. Surely they were aware that the Reservation serves as a vital, well-populated homeland for a unique people and culture, sociologically, culturally, economically and legally distinct from the surrounding lands and communities across its borders.

There are approximately 4,900 enrolled Northern Cheyennes, and almost 4,000 of them live on the Reservation. These resident Northern Cheyenne comprise approximately 80% of the Reservation population with the remaining 20% evenly divided between other Indians and non-Indians. Traditional Northern Cheyenne culture and values thrive on the Reservation, and the Northern Cheyenne language is still widely spoken. 98% of the 445,000 acres comprising the Reservation is trust land; the major portion beneficially owned by the Tribe and the remainder beneficially owned by individual Northern Cheyennes. Day-to-day control and use of virtually all Reservation land is enjoyed by the Northern Cheyennes themselves. With the exception of an ongoing oil and gas exploration program, non-Indian interests and activities on the Reservation are of minimal significance. In sum, the

Reservation is sociologically and culturally distinct from the surrounding communities. Yet this is neither recognized nor discussed in the FEIS or Tract Profiles.

Primary governmental authority on the Reservation is exercised by the Tribe itself. Tribal government provides and administers public services and facilities financed from Tribally budgeted funds. The State of Montana and the local counties, Rosebud and Big Horn Counties, possess, at best, only scant authority over non-Indian interests and activities on the Reservation and no authority over Indian interests and activities. Accordingly, state, county and other local governments provide no significant public services or facilities. Nor are significant state or county funds allocated to the costs of such services or facilities. Although the FEIS and Tract Profiles discuss in detail the demands on counties and off-Reservation towns for increased public services and facilities which will be engendered by the proposed development, they fail to recognize that similar demands will be made on Tribal government -- demands which under prevailing law and practice can not be satisfied through the provision of state or county services.

It is well known that economic standards prevailing on the Reservation are substantially depressed from those which otherwise prevail in Rosebud and Big Horn Counties. This is so with respect to the relative economic circumstances of individuals residing on and off the Reservation and, even more significantly for present purposes, with respect to the comparative economic resources of Tribal government and county and town governments. In marked contrast to adjoining off-Reservation jurisdictions, the Northern Cheyenne Reservation traditionally and currently lacks a tax base from which adequate governmental revenue may be generated. Thus, from the outset, the Northern Cheyenne Tribal government will be substantially less capable economically than its off-Reservation non-Indian counterparts to cope with the economic burdens which enhanced development will inflict on units of local government. Yet, this is neither recognized nor discussed in the FEIS and Tract Profiles.

And, most importantly in the present circumstances, the financial programs under state and federal law that are specifically designed to provide funds to state, county and local governments to mitigate the costs of coal development impacts are simply not made available to the Tribe. Thus, as development is implemented, while affected off-Reservation communities <u>will</u> have

access to substantial federal and state funds to mitigate forecasted impacts, the Tribe will have no access to such funds. However, this is not acknowledged or analyzed in the FEIS and Tract Profiles.

We believe these points regarding the unique sociological, cultural, economic and legal characteristics of the Tribe and Reservation, the financial disabilities of Tribal government, and the jurisdictional barriers to the provision of public services and facilities by state and local governments, are all deeply relevant to any proper assessment of the socio-economic impacts of the proposed federal leasing schedule. However, although these points are neither subtle nor obscure, the FEIS and its associated documents fail even to acknowledge them, let alone to analyze their implications.

In contrast, the FEIS and Tract Profiles do acknowledge and analyze the sociological and economic impacts of the proposed action on a number of counties and towns in southeastern Montana. Such analysis is performed for Powder River, Rosebud and Big Horn Counties and for the towns of Ashland, Broadus, Hardin, Colstrip and Forsyth. However, no sociological or economic analysis is performed with respect to the Northern Cheyenne Reservation as a whole or any of the towns or communities within the Reservation. Yet, it is clear that the Northern Cheyenne Reservation will be substantially more adversely impacted by the proposed action than will each of the analyzed off-Reservation communities, with the possible exception of Ashland. For example, the major Reservation town of Lame Deer is not only omitted from the analysis, but is not even mentioned in the documents or shown on the Regional Activity Map, notwithstanding that Lame Deer is substantially closer to the proposed development than are the analyzed towns of Broadus, Hardin and Forsyth. Indeed, in light of its central location within the prevailing road system, Lame Deer may prove to be a nerve center for surrounding development activities.

It is well known that, for a number of years, in a variety of situations and on a number of occasions, the Northern Cheyenne Tribe has manifested directly to the Department its profound concerns and sensitivities about the potential serious adverse socio-economic effects on the Tribe of large scale development, whether occurring on or near the Reservation. Indeed, many of the points made in this letter have been presented repeatedly by the Tribe to the Department and to other federal and state officials.

Thus, there can be no justification for the singular failure of the FEIS and Tract Profiles to analyze these issues.

Under law, the Department of the Interior owes a solemn trust obligation to the Tribe which entails a unique duty not owed to those off-Reservation communities that were considered in the FEIS and Tract Profiles. Since the proposed lease sale indisputably will engender substantial socio-economic impacts on the Tribe, under this unique duty the Department was required to identify and analyze these impacts in the course of preparing the proposed sale. Although we believe that it is otherwise clear that there is a patent and serious flaw in the FEIS and Tract Profiles, this failure is even more apparent and egregious when considered in the context of this trust obligation.

We believe this pattern of failure constitutes a self-evident and serious flaw in the FEIS and its supporting documents. We have focused on this defect because we believe that you will agree that it is patent and not subject to reasonable debate. However, by our doing so, it should not be inferred that we are necessarily satisfied with FEIS analysis as to other significant Tribal interests.

The Tribe is aware that the Powder River Regional Coal leasing schedule was established by Secretarial action, and, therefore, that only the Secretary can adjust the schedule to address these concerns of the Tribe. Accordingly, we seek a meeting with you to discuss the manner in which meaningful administrative solutions to this problem may be fashioned without undue disruption of the overall goals of the federal coal leasing program. Since the proposed sale constitutes a first serious step in a contemplated broad expansion of the federal coal leasing program in the area. we believe that every effort should be made now to air and resolve the legitimate concerns of the Tribe implicated by such development. We hope that you will agree with these observations and will commence meaningful discussions with the Tribe to fashion a suitable administrative solution. We believe that such a course will not only fulfill special obligations owed to the Tribe by the Department, but will also serve the Department's long-term goals for an effective program of federal coal leasing in the Northern Powder River region.

Since the sale is scheduled to occur in six weeks, it is essential that such a meeting occur as promptly as is conveniently possible. We have already presented these concerns in person to

the Montana State Director on March 11, 1982 and will make a similar presentation to the Wyoming State Director on March 23, 1982.

As we have said, there exists a serious and damaging flaw in the FEIS and Tract Profiles, to the severe prejudice of the Northern Cheyenne Tribe. We have advised the Tribe that this defect is so patent and substantial that, in all likelihood, on request of the Tribe, a court would enjoin the sale. And the Tribe feels so strongly about this matter that, if necessary, it will resort to the courts.

However, the Tribe hopes that because of the clear nature of this legal defect, the Department will recognize that it would be both inappropriate and, in the final analysis, perhaps seriously counterproductive for the Department simply to cast aside the concerns of the Tribe. Because the Tribe believes that its concerns may still be addressed by prompt administrative action, the Tribe seeks to meet with you for the purpose of discussing and fashioning an appropriate administrative resolution.

Very truly yours,

ZIONTZ, PIRTLE, MORISSET,
ERNSTOFF & CHESTNUT

Steven H. Chestnut

SHC:mg
cc: (see attached)

Allen Rowland
President, Northern Cheyenne Indian Tribe

Garrey E. Carruthers
Assistant Secretary for Land and Water Resources

David C. Russell
Deputy Assistant Secretary for Land and Water Resources

Robert Burford
Director of Bureau of Land Management

William H. Coldiron
Solicitor for Indian Affairs

Lawrence Jensen
Associate Solicitor for Indian Affairs

Mike Penfold
Montana State Director, Bureau of Land Management

Maxwell T. Lieurance
Wyoming State Director, Bureau of Land Management

Ken Smith
Assistant Secretary for Indian Affairs

Anson Baker
Area Director, Bureau of Indian Affairs, Billings

John Melcher
Senator, State of Montana

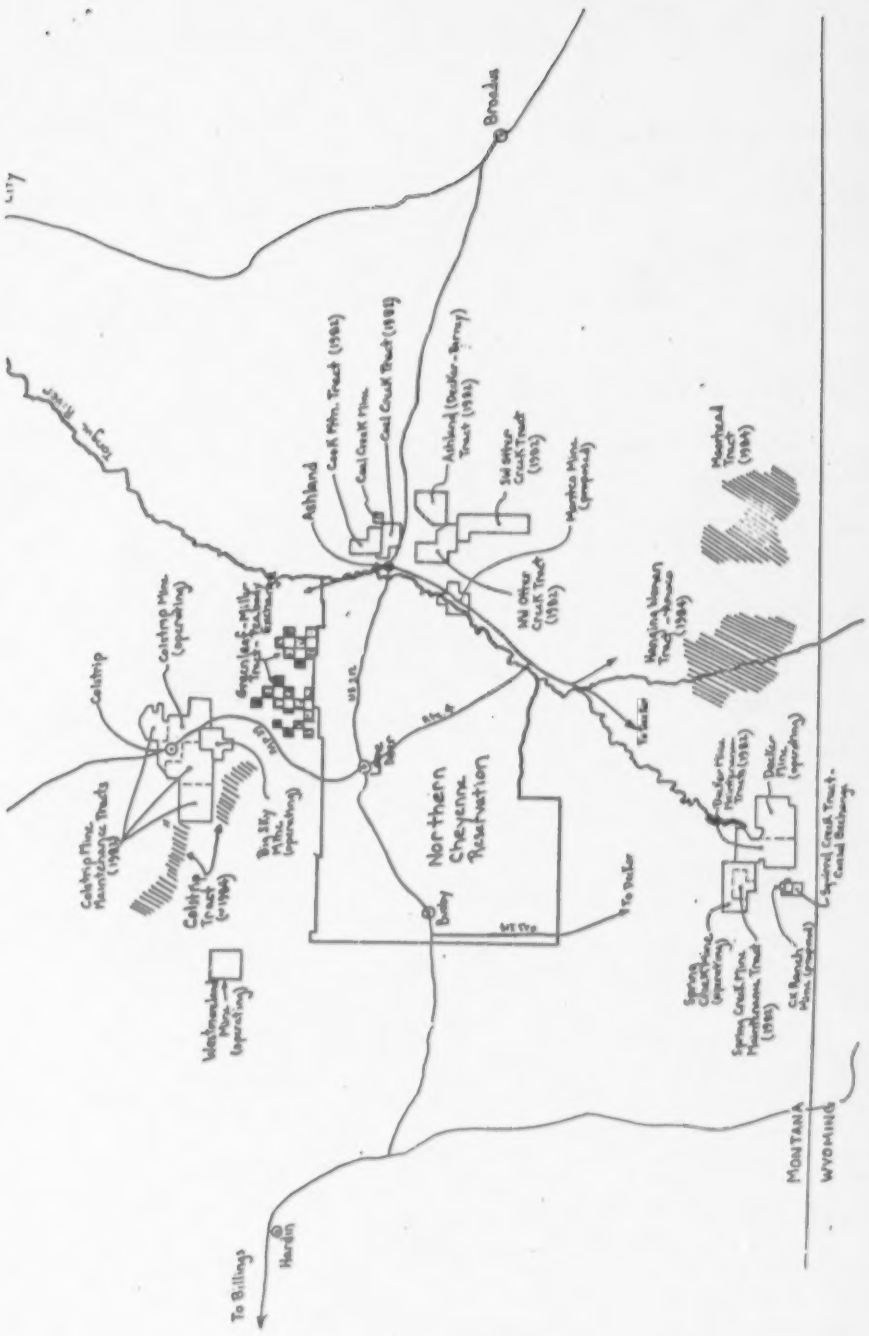
Max Baucus
Senator, State of Montana

Ron Marlenee
Congressman, State of Montana

Pat Williams
Congressman, State of Montana

Ted Schwinden
Governor, State of Montana

Ed Herschler
Governor, State of Wyoming


Broadus
Ashland
Coal Creek Min. Tract (1984)
Coal Creek Mine
Coal Creek Tract (1983)
Ashland (Decker-Birney) Tract (1984)
Sid Wise Creek Tract (1983)
Rosebud Mine (proposed)
NW Otter Creek Tract (1983)
Otter Creek Tracts
Rosebud Tract (1984)
Hanging Woman Tract - Rosebud (1984)
Colstrip
Colstrip Mine (operating)
Colstrip Mine Reclamation Tracts (1983)
Colstrip Tract (-1986)
Big Sky Mine (operating)
Western Energy Mine (operating)
Northern Cheyenne Reservation
Busby
To Hardin
To Decker
Decker Mine Reclamation Tracts (1983)
Decker Mine (operating)
Spring Creek Mine (operating)
Spring Creek Mine Reclamation Tract (1983)
Cx Ranch Mine (proposed)
Lighthorse Creek Tract - Coal Bearing
MONTANA
WYOMING
To Billings
Hardin

AMAX COAL COMPANY
A DIVISION OF AMAX INC.
105 SOUTH MERIDIAN STREET, INDIANAPOLIS, INDIANA 46225 • (317) 266-2626

JOHN A. CONLON
VICE PRESIDENT-PUBLIC AFFAIRS

March 23, 1982

Senator John W. Warner, Chairman, Subcommittee on Energy
and Mineral Resources
Senate Energy and Natural Resources Committee
c/o Roger A. Sindelar
Room 3204 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Mr. Chairman:

AMAX Coal Company, a division of AMAX Inc., appreciates this opportunity to submit comments for the record pursuant to the hearing conducted in Billings, Montana on February 22 by Senator John Melcher regarding the proposed leasing plan for the Powder River Region of Montana and Wyoming. AMAX Coal shares many of the same concerns and goals of the Federal government in the management of its natural resources. As such, we are committed to the management of these resources in a most appropriate and efficient way.

AMAX has supported the Interior Department's position that new Federal coal leasing is needed in the United States and particularly the Powder River Basin. Making coal resources available for leasing consideration is imperative if the United States is to be responsive to both the foreseeable and nonforeseeable energy needs of the American public. This leasing, however, must be done in an organized and efficient manner. AMAX believes the Interior Department's proposed leasing plan for the Powder River Basin sale accomplishes this goal.

Following recommendations of the Regional Coal Team, the Secretary of Interior has set aside 2.4 billion tons of coal for leasing consideration in the Powder River Region for the 1982 sale. This 2.4 billion ton figure is significantly higher than the leasing target of 776 million tons initially established by the previous Administration. It is AMAX Coal's understanding that this variation reflects change in the Interior Department's philosophy and more closely studied demand figures. While the previous Administration relied on a predetermined leasing target linked to the forecasted demand of the area, the current Administration favors allowing the market place to determine the leasing needs, thereby eliminating the problems under market demand. AMAX Coal Company supports this Administration's conceptual change and applauds the use of the free enterprise philosophy which incorporates sound business decisions in the government's leasing policy.

While AMAX does not support the overleasing of coal, we believe the effects of a shortfall on leasing may be more devastating than the effects of overleasing. AMAX believes the market approach not only will better serve this nation's security interests but also will provide for the orderly development of coal resources in a timely manner. In addition, the market approach will promote more competition among buyers which is one of the basic premises of the Federal Coal Management Program.

It should be noted that AMAX Coal believes that the support for the recommended leasing level is not inconsistent with our past comments in support of a lesser target level. In December, 1980, AMAX Coal did not support the Carter Administration's upper end leasing target of 2.4 billion tons. AMAX did not support this target because a careful examination using the Department of Energy assumptions in projecting the target indicated a lower level. AMAX Coal's comments at the time reflected our analysis of these Department of Energy assumptions. Because we were asked to comment on the proposed leasing target for the Powder River Basin and not asked to comment on the leasing philosophy used by the Administration at the time, our comments were based upon an assessment of market demand and not an assessment of prevailing Administration philosophy. AMAX Coal accepted the fact that the leasing target would be tied to projected demand.

Our company's support of a relatively conservative target was affected in part by concerns about the Department of Energy's assumptions on both "projected production" and "projected goal" figures. At that time, AMAX Coal's estimates of induced consumer demand for coal from this region differed substantially from the Department of Energy projections, leading us to believe that the Department of Energy had overestimated the demand for these resources and was setting a target based on an inflated and unrealistic number. AMAX stands by that statement; however, we support the elimination of a leasing target which does not take into account the strategic holdings of the companies who will be competing in the marketplace.

Following years of leasing moratoriums as a result of litigation, AMAX commends the Department of Interior for presenting the nation with a long-needed leasing program and we support the current Administration's policy to implement this program in the most economically sound and environmentally safe way possible. If I may be of any further assistance, please do not hesitate to contact me.

Sincerely,

John A. Conlon
Vice President, Public Affairs

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